73 Am. Jur. 2d Statutes I A Refs.

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Statutes

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I. Overview; General Nature and Types of Statutes

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 131

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Statutes
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I. Overview; General Nature and Types of Statutes

A. In General

§ 1. Generally; amendments and supplemental statutes

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West's Key Number Digest

West's Key Number Digest, Statutes 2, 131

The word "statute" means a law[1] or regulation[2] enacted by the legislative branch of government.

While, in the strict sense of the term, an administrative regulation is not actually a "statute," but is at most an offspring of a statute,[3] a regulation may be deemed to come within the term "statute," and have the same force and effect as a statute, although there is also authority for the view that rules are less than the equivalent of statutory law.[4]

An amendment has been defined as a legislative act designed to change some prior and existing law by adding to or taking from it some particular provision.[5] Amendments to a statute either clarify the law or change it.[6] Congress routinely creates new rights of action by amending existing statutes, and altering statutory definitions, or adding new definitions of terms previously undefined, is a common way of amending statutes. An amendment to an existing statute is no less an "act of Congress" than a new, stand-alone statute; what matters is the substantive effect of an enactment, the creation of new rights of action and corresponding liabilities, not the format in which it appears in the United States Code.[7]

A statute designed to improve an existing statute by adding something thereto without changing the original text has been regarded as a supplemental act.[8] The functions of a statute declared to be supplementary to a previous statute are to supply deficiencies in the previous statute and to add to, complete, or extend that statute without changing or modifying it.[9]

CUMULATIVE SUPPLEMENT

Cases:

Word "statute" refers to an entire bill once it has been enacted into law as an Act of Assembly, which may subsequently be divided into many sections when codified, and in its more colloquial sense, the word "statute" may be used to refer to an individual codified section rather than the entire enactment of which it was a part. Butler v. Fairfax County School Bd., 780 S.E.2d 277 (Va. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Snow v. Ruden, McClosky, Smith, Schuster & Russell, P.A., 896 So. 2d 787, 36 A.L.R.6th 845 (Fla. Dist. Ct. App. 2d Dist. 2005); St. Luke Hosp., Inc. v. Straub, 354 S.W.3d 529 (Ky. 2011).

2 St. Luke Hosp., Inc. v. Straub, 354 S.W.3d 529 (Ky. 2011).

3 U.S. v. Mersky, 361 U.S. 431, 80 S. Ct. 459, 4 L. Ed. 2d 423 (1960).

4 Am. Jur. 2d, Administrative Law § 238.

5 Planned Parenthood Affiliates v. Swoap, 173 Cal. App. 3d 1187, 219 Cal. Rptr. 664 (1st Dist. 1985).

6 People v. Covington, 19 P.3d 15 (Colo. 2001), as modified on denial of reh'g, (Mar. 12, 2001).

7 Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369, 124 S. Ct. 1836, 158 L. Ed. 2d 645 (2004).

8 First State Bank of Shelby v. Bottineau County Bank, 56 Mont. 363, 185 P. 162, 8 A.L.R. 631 (1919).

9 Lost Creek School Tp., Vigo County v. York, 215 Ind. 636, 21 N.E.2d 58, 127 A.L.R. 1287 (1939).

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I. Overview; General Nature and Types of Statutes

A. In General

§ 2. Resolutions as distinguished from statutes

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West's Key Number Digest

West's Key Number Digest, Statutes 2

In some states, as a rule, although joint or concurrent resolutions of a legislature may bind members of the legislative body,[1] they do not have the force of law,[2] are not statutes,[3] and are not effective for purposes requiring the exercise of legislative authority.[4] A resolution is not a law but merely the form in which the legislature expresses an opinion.[5] In states following this rule, when the legislature wishes to act in an advisory capacity, it may act by resolution, but if it wishes to take action having a binding effect on those outside the legislature, it may do so only by following the enactment procedure set forth in the state constitution.[6] Since, under this view, resolutions are not legislation, they need not be presented to the governor for approval.[7]

In other states, concurrent resolutions of the state legislature are legislative actions with the force and effect of law which are required to be approved by the constitutional requirements for legislative actions.[8] Accordingly, the governor's affirmative approval is required before a resolution becomes effective, but if the governor's approval is not given, the resolution may be repassed by both legislative houses, at which time the procedures followed are those for the enactment of a bill.[9]

In some jurisdictions, a concurrent resolution signed by the governor has the effect of law, although a resolution in and of itself is not law as contemplated under the applicable state constitutional provision which states that no law may be passed except by bill, since resolutions do not attempt to promulgate rules or create rights but merely enhance those which already exist.[10] Furthermore, under some state constitutions, legislative actions, whether by committee, by resolution of one house, or by joint resolution of the whole legislature, cannot amend, modify, rescind, or supplant any rule promulgated by a state agency unless the legislature follows the bill passage requirements prescribed by the state constitution.[11]

CUMULATIVE SUPPLEMENT

Cases:

Constitutional provision that provided that no power of suspending laws shall be exercised unless by the Legislature or by its authority did not operate to allow the Legislature to act unilaterally to end the Governor's state of emergency with regard to the COVID-19 pandemic through a concurrent resolution, without presentment to the Governor for his approval or veto; the provision was intended as a negative check on executive power, rather than an affirmative grant of power to the Legislature to act unilaterally. Pa. Const. art. 1, § 12; Pa. Const. art. 3, § 9. Wolf v. Scarnati, 233 A.3d 679 (Pa. 2020).

[END OF SUPPLEMENT]

Footnotes

1 State ex rel. Barker v. Manchin, 167 W. Va. 155, 279 S.E.2d 622 (1981).

2 Bauer v. Lancaster County School Dist. 001, 243 Neb. 655, 501 N.W.2d 707, 83 Ed. Law Rep. 805 (1993); State ex rel. Barker v. Manchin, 167 W. Va. 155, 279 S.E.2d 622 (1981).

3 Bauer v. Lancaster County School Dist. 001, 243 Neb. 655, 501 N.W.2d 707, 83 Ed. Law Rep. 805 (1993); State ex rel. Barker v. Manchin, 167 W. Va. 155, 279 S.E.2d 622 (1981).

4 Bauer v. Lancaster County School Dist. 001, 243 Neb. 655, 501 N.W.2d 707, 83 Ed. Law Rep. 805 (1993).

5 Wright v. Childree, 972 So. 2d 771 (Ala. 2006).

6 State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980).

7 Colorado General Assembly v. Lamm, 700 P.2d 508 (Colo. 1985); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).
As to requirement that bills be presented to the chief executive, see § 31.

8 Weinstock v. Holden, 995 S.W.2d 411 (Mo. 1999).

9 State v. John R. Phenix & Associates, Inc., 6 S.W.3d 288 (Tex. App. Houston 14th Dist. 1998).
As to requirement that bills be presented to chief executive, see § 31.

10 West Shore School Dist. v. Pennsylvania Labor Relations Bd., 534 Pa. 164, 626 A.2d 1131, 83 Ed. Law Rep. 1086 (1993).

11 State ex rel. Stephan v. Kansas House of Representatives, 236 Kan. 45, 687 P.2d 622 (1984); Missouri Coalition for Environment v. Joint Committee on Administrative Rules, 948 S.W.2d 125 (Mo. 1997), as modified on denial of reh'g, (Feb. 25, 1997).

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West's Key Number Digest

West's Key Number Digest, Statutes 66 to 68, 71 to 77(2), 93(1) to 93(10)

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I. Overview; General Nature and Types of Statutes

B. General and Special or Local Laws

§ 3. General laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 66 to 68, 71 to 76(6)

A "general law" is defined as a statute relating to subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class.[1] It is one that uniformly regulates or involves all persons or things in a given class and is general in its application and embrace to all of a given class as opposed to applying to less than an entire class of similarly situated persons.[2]

Some state constitutions require that laws of a general nature must have uniform operation.[3] "General laws" that the legislature is permitted to pass are those that operate equally and uniformly upon all persons brought within the relations and circumstances for which they provide or that operate equally upon all persons of a designated class founded upon a reasonable and proper classification.[4] A law which operates uniformly upon all persons of a designated class is a "general law" within the meaning of state constitution's uniformity clause provided that the classification thus made is not arbitrary or unreasonable. A law operating uniformly throughout the state, but from which the General Assembly excepts certain persons or things, is still a general law within the meaning of state constitution's uniformity clause.[5] However, a general law operates as an unreasonable classification, in violation of a uniformity clause, when it seeks to create artificial distinctions where no real distinction exists.[6]

A "general law" is one that pertains to two or more geographical subdivisions within the State and deals with the general public welfare, a subject which is of significant interest not just to any one county but rather to more than one geographical subdivision or even to the entire state.[7] General laws need not operate upon every locality in the state but must apply equally to all classes similarly situated and apply to like conditions and subjects. A law may be general and have a local application or apply to a designated class if it operates equally upon all the subjects within the class for which it was adopted.[8]

Caution:

A statutory expression of intent to make a law uniform cannot supplant the constitutional requirement of uniformity.[9]

CUMULATIVE SUPPLEMENT

Cases:

For purpose of determining whether legislation violates the uniformity clause, a law is general if the subject does or may exist in, and affect the people of, every county in the state. Const. Art. 2, § 26. Linndale v. State, 2014-Ohio-4024, 19 N.E.3d 935 (Ohio Ct. App. 10th Dist. Franklin County 2014).

[END OF SUPPLEMENT]

Footnotes

1 Lawnwood Medical Center, Inc. v. Seeger, 990 So. 2d 503 (Fla. 2008).

2 Thomas v. Henry, 2011 OK 53, 260 P.3d 1251 (Okla. 2011).

3 Gliemmo v. Cousineau, 287 Ga. 7, 694 S.E.2d 75 (2010); E. Liverpool v. Columbiana Cty. Budget Comm., 114 Ohio St. 3d 133, 2007-Ohio-3759, 870 N.E.2d 705 (2007); State v. Robinson, 2011 UT 30, 254 P.3d 183 (Utah 2011).

4 Deer Enterprises, LLC v. Parish Council of Washington Parish, 56 So. 3d 936 (La. 2011).

5 Gliemmo v. Cousineau, 287 Ga. 7, 694 S.E.2d 75 (2010).

6 Desenco, Inc. v. Akron, 84 Ohio St. 3d 535, 1999-Ohio-368, 706 N.E.2d 323 (1999).

7 Washington Suburban Sanitary Com'n v. Phillips, 413 Md. 606, 994 A.2d 411 (2010).

8 City of Enid v. Public Employees Relations Bd., 2006 OK 16, 133 P.3d 281 (Okla. 2006).

9 City of Junction City v. Griffin, 227 Kan. 332, 607 P.2d 459 (1980).

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B. General and Special or Local Laws

§ 4. Special laws; "class legislation"

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 77(1), 93(1) to 93(10)

Ordinarily, a statute is regarded as a "special law" if it does not have a uniform operation.[1] A special law confers special privileges or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. A special law is generally one that operates on and affects only a fraction of the persons or a portion of the property encompassed by a classification, granting privileges to some persons while denying them to others. In other words, a law is special if it affects only a certain number of persons within a class and not all persons possessing the characteristics of the class. A special law is directed to secure some private advantage or advancement for the benefit of private persons.[2] A law is a "special law" if it pertains to a part of a class as opposed to all of a class[3] where a part of the entire class of similarly affected persons is separated for different treatment.[4] Special legislation relates either to particular persons, places, or things, or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but for such legislation, be applied.[5] A "special law" is one relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when the classification is not permissible or the classification adopted is illegal.[6] Classifications for the purpose of legislation, under a state constitution's prohibition against special legislation, must be real and not illusive, and they cannot be based on distinctions without a substantial difference.[7]

The term "class legislation" is a characterization of legislation in contravention of the state constitutional prohibition against special legislation.[8]

Distinction:

A "general law" relates to all persons or things of a class, and a "special law" relates to particular persons or particular things within a class.[9] A "special law" confers rights and privileges on particular members of a class or to an arbitrarily drawn class that is not rationally related to a legitimate governmental purpose, while a "general law" applies to all persons of a reasonably defined class.[10]

CUMULATIVE SUPPLEMENT

Cases:

Whether a law regulates or affects county business, so as to be prohibited by constitutional provision barring certain local and special laws, hinges on whether: (1) the challenged law governs a single item or project, rather than multiple items or projects; and (2) the law's effect is temporary, rather than permanent. West's NRSA Const. Art. 4, § 20. Attorney General v. Gypsum Resources, 294 P.3d 404, 129 Nev. Adv. Op. No. 4 (Nev. 2013).

To determine if law is a "special law" prohibited by State Constitution, courts look at whether: (1) the law has rational relationship to a legitimate legislative objective, (2) the classification the law makes is legitimate, encompassing all members that are similarly situated, and (3) the classification is elastic, allowing other individuals or entities to come within and move out of the class. A.R.S. Const. Art. 4, Pt. 2, § 19. Gallardo v. State, 336 P.3d 717 (Ariz. 2014).

A "special law" subject to limitations imposed by state constitution is a law that includes less than all who are similarly situated; a law is not special if it applies to all of a given class alike and the classification is made on a reasonable basis. V.A.M.S. Const. Art. 3, § 40. City of St. Louis v. State, 382 S.W.3d 905 (Mo. 2012).

Generally, a class of property owners in a certain geographic area cannot form a closed class, for the purposes of a challenge to legislation as an unconstitutional special law. Neb. Const. art. 3, § 18. Dowd Grain Company, Inc. v. County of Sarpy, 291 Neb. 620, 867 N.W.2d 599 (2015).

A statute is a "special law" under the constitutional provision restricting special laws where a part of an entire class of similarly affected persons is separated for different treatment. Const. Art. 5, § 46. Montgomery v. Potter, 2014 OK 118, 341 P.3d 660 (Okla. 2014).

A "special law," within the meaning of the state constitutional prohibition of special laws regulating the practice or jurisdiction of the judiciary, is a law which singles out less than an entire class of similarly affected persons or things or different treatment, and relates to particular persons or particular things within a class; on the other hand, a "general law" relates to all persons or things of a class and operates uniformly upon all persons or things brought within the class by common circumstances, even though it may directly affect only a few. Const. Art. 5, § 46. Kentucky Fried Chicken of McAlester v. Snell, 2014 OK 35, 345 P.3d 351 (Okla. 2014).

Under state constitution's prohibition of special laws, a legislative classification must be based on real distinctions in the subjects classified and not on artificial or irrelevant ones used for the purpose of evading the constitutional prohibition. Const. Art. 3, § 32. Robinson Tp., Washington County v. Com., 83 A.3d 901 (Pa. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Reid v. Robertson, 304 Ky. 509, 200 S.W.2d 900 (1947).
As to the requirement that general laws operate uniformly, see § 3.

2 Deer Enterprises, LLC v. Parish Council of Washington Parish, 56 So. 3d 936 (La. 2011).

3 Clean Water Coalition v. The M Resort, LLC, 255 P.3d 247 (Nev. 2011).

4 Arrow Trucking Co., Inc. v. Jimenez, 2010 OK CIV APP 9, 231 P.3d 741 (Div. 2 2009).

5 Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005); Dairy Product Services, Inc. v. City of Wellsville, 2000 UT 81, 13 P.3d 581 (Utah 2000).

6 Lawnwood Medical Center, Inc. v. Seeger, 990 So. 2d 503 (Fla. 2008).

7 In re Interest of A.M., Jr., 281 Neb. 482, 797 N.W.2d 233 (2011), cert. denied, 132 S. Ct. 341, 181 L. Ed. 2d 214 (2011).

8 Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991).
As to such constitutional prohibition, generally, see § 6.

9 Maryland Dept. of Environment v. Days Cove Reclamation Co., Inc., 200 Md. App. 256, 27 A.3d 565 (2011); City of Sullivan v. Sites, 329 S.W.3d 691 (Mo. 2010); Lafalier v. Lead-Impacted Communities Relocation Assistance Trust, 2010 OK 48, 237 P.3d 181 (Okla. 2010).

10 Governale v. Lieberman, 226 Ariz. 443, 250 P.3d 220 (Ct. App. Div. 1 2011), review denied, (May 24, 2011).

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§ 5. Local laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 77(1)

A law is a "local law" if it applies to any division or subdivision of state less than whole.[1] A local act is a special,[2] and not a general, act.[3]

Distinction:

General legislation affects all parts of the state similarly situated, whereas a local act affects only one locality arbitrarily selected.[4]

Within the meaning of constitutional prohibitions against local laws,[5] a law is local when by force of an inherent limitation, it arbitrarily separates some places from others upon which, except for such limitation, it would operate[6] and where it embraces less than the entire class of places to which such legislation would be necessary or appropriate having regard to the purpose for which the legislation was designed.[7] A "local law" is one relating to, or designed to operate only in, a specifically indicated part of the state or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.[8] A statute is generally considered to be a "local law" that the legislature is not permitted to pass if it operates only in a particular locality or localities without the possibility of extending its coverage to other areas should the requisite

criteria exist or come to exist there; however, a law is not local, even though its enforcement may be restricted to a particular locality or localities, where the conditions under which it operates simply do not prevail in other localities. A law is not a "local law" that the legislature is not permitted to pass if its coverage can extend to other localities or areas. Generally, a law that applies to localities within a certain population is not a "local law" that the legislature is not permitted to pass because other localities potentially can meet the population trigger and become subject to the particular law.[9]

Footnotes

1 Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005); Clean Water Coalition v. The M Resort, LLC, 255 P.3d 247 (Nev. 2011).

2 State ex rel. Atty. Gen. v. Beacom, 66 Ohio St. 491, 64 N.E. 427 (1902).

3 Webb v. Adams, 180 Ark. 713, 23 S.W.2d 617 (1929).

4 Weiss v. Geisbauer, 363 Ark. 508, 215 S.W.3d 628 (2005).

5 § 6.

6 Wayne County Bd. of Review v. Great Lakes Steel Corp., 300 U.S. 29, 57 S. Ct. 329, 81 L. Ed. 485 (1937).

7 McIntyre v. Clarkson, 254 N.C. 510, 119 S.E.2d 888 (1961).

8 Lawnwood Medical Center, Inc. v. Seeger, 990 So. 2d 503 (Fla. 2008).

9 Deer Enterprises, LLC v. Parish Council of Washington Parish, 56 So. 3d 936 (La. 2011).

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I. Overview; General Nature and Types of Statutes

B. General and Special or Local Laws

§ 6. General prohibition against special or local laws; validity and constitutionality

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 67, 76(1), 77(1), 93(1) to 93(10)

State constitutions generally prohibit the enactment of special laws where a general law can be made applicable.[1] Under some state constitutions, if a statute be either a special or local law, or both, and comes within any one or more of the cases enumerated in the section of the constitution prohibiting certain local and special laws, such statute is unconstitutional; if the statute does not come within any of the cases enumerated, then its constitutionality depends upon whether a general law can be made applicable.[2]

The purpose of constitutional prohibitions against special or local legislation is to prevent a legislature from providing benefits or favors to certain groups or localities.[3] They represent an important safeguard against the abuse of legislative power on behalf of special interests,[4] preventing legislation which arbitrarily benefits or grants special favors to a specific class,[5] and picking favorites.[6] The purpose is to prevent one who has sufficient influence to secure legislation from getting an undue advantage over others, as well as to prevent the dispensation or grants of special privileges to special interests, through the instrumentality of special legislation in conflict with previously enacted general legislation covering the same subject matter.[7] The purpose of a constitutional prohibition of special legislation is to prevent state legislatures from granting preferences to some local units or areas within the state thus creating an irregular system of laws lacking state-wide uniformity.[8]

The proper standard in determining whether a law is an unconstitutional special law is whether there is a reasonable possibility that the class will include others.[9] A law may not include less than all who are similarly situated; thus, the question in every case challenging a law on the basis it constitutes special legislation is whether any appropriate object is excluded to which the law, but for its limitations, would apply.[10] A legislative act constitutes "special legislation" if (1) it creates an arbitrary and unreasonable method of classification or (2) it creates a permanently closed class.[11] It has been said that to violate constitutional provisions regarding laws of a general nature and special laws, a statute must either be a general law which lacks uniform operation throughout the state or a special law for which provision has been made by existing general law.[12] Furthermore,

the view has been followed that constitutional provisions prohibiting the enactment of a special law where a general law can be made applicable not only limit special legislation where an existing general law is already applicable but also where it is possible to create a general law which would be applicable.[13] A major exception to the constitutional prohibition of special acts when a general law can be made applicable is when the legislature has the constitutional authority to legislate specifically or directly in a matter.[14]

Although in some states the unconstitutionality of a special law is presumed,[15] special legislation does not constitute a per se violation of a state constitution's special legislation clause since special legislation may be enacted where the objects of a law cannot readily be attained by general legislation.[16] A presumption exists in favor of a classification being reasonable for purposes of constitutional provision prohibiting a special or local act when a general act is, or can be made, applicable.[17] A law is facially special if it is based on close-ended characteristics, such as historical facts, geography, or constitutional status. A facially special law is presumed to be unconstitutional. The party defending the facially special statute must demonstrate a "substantial justification" for the special treatment. A law based on open-ended characteristics is not facially special and is presumed to be constitutional.[18]

Observation:

Special legislation analysis is similar to an equal protection analysis, and often the two are discussed together because, at times, both issues can be decided on the same facts and as a result, language normally applied to an equal protection analysis is sometimes used to help explain the reasoning employed under a special legislation analysis; however, the focus of each test is different. The analysis under a special legislation inquiry focuses on the legislature's purpose in creating the class and asks if there is a substantial difference of circumstances to suggest the expediency of diverse legislation, and this is different from an equal protection analysis under which the state interest in legislation is compared to the statutory means selected by the legislature to accomplish that purpose.[19]

The general test of constitutionality for prohibitions against special legislation is reasonableness of classification and uniformity of operation.[20] The ultimate test to determine the legislature's authority to make classifications for legislative purposes is whether there is a reasonable basis for the classification and whether the law treats all within the class equally.[21]

CUMULATIVE SUPPLEMENT

Cases:

While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of action; even laws that impose a duty or liability upon a single individual or firm are not on that account invalid. Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016).

Law based on open-ended characteristics is not facially special and is presumed to be constitutional under Missouri Constitution, stating that general assembly shall not pass any local or special law granting to any corporation, association or individual any

special or exclusive right, privilege or immunity. Mo. Const. art. 3, § 40. Eco-Site, LLC v. City of University City, Missouri, 431 F. Supp. 3d 1069 (E.D. Mo. 2019).

"Special laws," which are prohibited by State Constitution, favor one person or group and disfavor others. A.R.S. Const. Art. 4, Pt. 2, § 19. Gallardo v. State, 336 P.3d 717 (Ariz. 2014).

Under the special legislation clause, the legislature may not confer a special benefit or privilege upon one group and exclude others that are similarly situated unless there is a rational basis to do so. S.H.A. Const. Art. 4, § 13. Murphy v. Colson, 2013 IL App (2d) 130291, 376 Ill. Dec. 489, 999 N.E.2d 372 (App. Ct. 2d Dist. 2013).

The primary purpose of state constitution's section governing local and special legislation, and by extension the section prohibiting the General Assembly from indirectly enacting special or local act by repealing part of general act, is to prevent special privileges, favoritism, and discrimination, and to ensure equality under the law. Const. §§ 59, 60. Louisville/Jefferson County Metro Government v. O'Shea's-Baxter, LLC, 438 S.W.3d 379 (Ky. 2014).

The Legislature has the power to enact special legislation not prohibited under the Nebraska Constitution where the subject or matters sought to be remedied could not be properly remedied by a general law and where the Legislature has a reasonable basis for the enactment of the law. Neb. Const. art. 3, § 18. Dowd Grain Company, Inc. v. County of Sarpy, 291 Neb. 620, 867 N.W.2d 599 (2015).

[END OF SUPPLEMENT]

Footnotes

1 General Motors Corp. v. State Motor Vehicle Review Bd., 224 Ill. 2d 1, 308 Ill. Dec. 611, 862 N.E.2d 209 (2007); Rohlfs v. Klemenhagen, LLC, 2009 MT 440, 354 Mont. 133, 227 P.3d 42 (2009); Clean Water Coalition v. The M Resort, LLC, 255 P.3d 247 (Nev. 2011).
A law is impermissible under section of constitution governing special laws if two conditions are met: (1) the law is a special law, and (2) a general law relating to the same subject matter already exists. Maryland Dept. of Environment v. Days Cove Reclamation Co., Inc., 200 Md. App. 256, 27 A.3d 565 (2011).

2 Clean Water Coalition v. The M Resort, LLC, 255 P.3d 247 (Nev. 2011).

3 State Compensation Fund v. Symington, 174 Ariz. 188, 848 P.2d 273 (1993).

4 Deer Enterprises, LLC v. Parish Council of Washington Parish, 56 So. 3d 936 (La. 2011).

5 Kiplinger v. Nebraska Dept. of Natural Resources, 282 Neb. 237, 803 N.W.2d 28 (2011).

6 Bridges v. Banner Health, 201 P.3d 484 (Alaska 2008), as amended on reh'g, (Mar. 5, 2009).

7 Maryland Dept. of Environment v. Days Cove Reclamation Co., Inc., 200 Md. App. 256, 27 A.3d 565 (2011).

8 Bonney v. Indiana Finance Authority, 849 N.E.2d 473 (Ind. 2006).

9 St. Vincent's Medical Center, Inc. v. Memorial Healthcare Group, Inc., 967 So. 2d 794 (Fla. 2007).

10 City of Sullivan v. Sites, 329 S.W.3d 691 (Mo. 2010).

11 Bridges v. Banner Health, 201 P.3d 484 (Alaska 2008), as amended on reh'g, (Mar. 5, 2009); In re Interest of A.M., Jr., 281 Neb. 482, 797 N.W.2d 233 (2011), cert. denied, 132 S. Ct. 341, 181 L. Ed. 2d 214 (2011).

12 Gliemmo v. Cousineau, 287 Ga. 7, 694 S.E.2d 75 (2010).

13 Yant v. City of Grand Island, 279 Neb. 935, 784 N.W.2d 101 (2010); Horry County v. Horry County Higher Educ. Com'n, 306 S.C. 416, 412 S.E.2d 421, 71 Ed. Law Rep. 1229 (1991).

14 Duke Power Co. v. South Carolina Public Service Com'n, 284 S.C. 81, 326 S.E.2d 395 (1985).

15 State ex rel. City of Blue Springs v. Rice, 853 S.W.2d 918 (Mo. 1993).

16 Opinion of the Justices, 402 A.2d 601 (Me. 1979).

17 Rohlfs v. Klemenhagen, LLC, 2009 MT 440, 354 Mont. 133, 227 P.3d 42 (2009).

18 Jefferson County Fire Protection Districts Ass'n v. Blunt, 205 S.W.3d 866 (Mo. 2006).

19 Michelle Hug, Henstock, Inc. v. City of Omaha, 275 Neb. 820, 749 N.W.2d 884 (2008).

20 University of Cumberlands v. Pennybacker, 308 S.W.3d 668, 256 Ed. Law Rep. 945 (Ky. 2010); Rohlfs v. Klemenhagen, LLC, 2009 MT 440, 354 Mont. 133, 227 P.3d 42 (2009); In re Interest of A.M., Jr., 281 Neb. 482, 797 N.W.2d 233 (2011), cert. denied, 132 S. Ct. 341, 181 L. Ed. 2d 214 (2011).

21 Texas Parks and Wildlife Dept. v. Garland, 313 S.W.3d 920 (Tex. App. Tyler 2010).

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Research References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 104, 236, 241(1), 241(2)

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§ 7. Remedial or curative statutes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 104, 236

"Remedial legislation" implies an intention to reform or extend existing rights. The purpose of remedial legislation is to promote justice and advance the public welfare and important and beneficial public objects. Legislation which has been regarded as "remedial" in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof, whether the previous difficulties were statutory or a part of the common law.[1] A "remedial statute" is one designed to cure mischief, or remedy a defect, in existing laws.[2] In the parlance of statutory construction, a "remedial" statute is one which affords a remedy or improves or facilitates remedies already existing for the enforcement or rights of redress of wrongs.[3] A "remedial statute" gives an injured person a private remedy for a wrongful act.[4] They also include statutes intended for the correction of defects, mistakes, and omissions in the civil institutions and the administration of the state. The definition of a "remedial statute" has also been stated as a statute that relates to practice, procedure, or remedies and does not affect substantive or vested rights.[5] An enactment extinguishing a cause of action or barring a party from prosecuting a cause of action affects substantive rights and, therefore, is not remedial.[6]

A "curative act" is one that is passed to cure defects in a prior law or to validate legal proceedings, instruments, or acts of public and private administrative authorities which in the absence of such an act would be void for want of conformity with existing legal requirements but which would have been valid if the statute had so provided at the time of enacting.[7] It is one which, while marking out a course for the officers to pursue, at the same time declares that certain irregularities will not vitiate any proceedings that has been had under the statute. For purposes of curative statutes, the legislature may make immaterial any procedural requirement which it could have omitted from the original legislation. However, the power to enact curative statutes does not extend to remedying a lack of authority to act at all.[8]

Footnotes

1 Kentucky Ins. Guar. Ass'n v. Jeffers ex rel. Jeffers, 13 S.W.3d 606 (Ky. 2000).

2 In re Beauregard, 151 N.H. 445, 859 A.2d 1153, 193 Ed. Law Rep. 266 (2004).

3 Langston v. Riffe, 359 Md. 396, 754 A.2d 389 (2000); Esposito v. O'Hair, 886 A.2d 1197 (R.I. 2005).

4 City of Waterloo v. Bainbridge, 749 N.W.2d 245 (Iowa 2008).

5 Langston v. Riffe, 359 Md. 396, 754 A.2d 389 (2000).

6 Tyrone W. v. Danielle R., 129 Md. App. 260, 741 A.2d 553 (1999), judgment aff'd, 359 Md. 396, 754 A.2d 389 (2000).

7 Tyrone W. v. Danielle R., 129 Md. App. 260, 741 A.2d 553 (1999), judgment aff'd, 359 Md. 396, 754 A.2d 389 (2000).

8 Public Service Co. of Oklahoma v. Northeastern Oklahoma Elec. Co-op., Inc., 2002 OK 29, 49 P.3d 80 (Okla. 2002).

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§ 8. Penal statutes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 241(2)

Strictly speaking, a penal statute is one that imposes punishment for an offense committed against the State.[1] It is the substance and effect of the statute, rather than its form, that are to be considered in determining whether it is penal.[2] The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual.[3] The term is sometimes extended to include any act which imposes a penalty[4] or creates a forfeiture.[5] Any statute authorizing imposition of a monetary fine is necessarily punitive or penal in nature.[6] However, a law is not penal merely because it imposes an extraordinary liability on a wrongdoer in favor of a person wronged, not limited to the damages suffered.[7] A statute which gives no more than a right of action to the party injured to recover increased damages is not a "penal statute."[8]

Under the tests traditionally applied to determine whether an act of Congress is penal or regulatory in character, the following factors are relevant: whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.[9] Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face.[10] These factors afford guidance but are neither exhaustive nor dispositive.[11] Whether a statutory scheme is civil or criminal is first of all a question of statutory construction; a court considers the statute's text and its structure to determine the legislative objective. Formal attributes of a legislative enactment, such as the manner of its codification or the enforcement procedures it establishes, are probative, but not dispositive, of the legislature's intent as to whether a statute is civil or criminal.[12]

Observation:

Although courts early in this century characterized regulatory statutes authorizing administrative actions to revoke or suspend a professional or vocational license in a given field as being penal in nature, a characterization that resulted in strict construction of those statutes, courts have since recognized that such administrative proceedings are not intended to punish the licensee but rather to protect the public. If the purpose of a licensing statute is not to punish but to serve another legitimate governmental purpose, such as protecting the consumers and the public who deal with members of a particular profession or trade, the statute is considered nonpenal.[13]

Footnotes

1 Huntington v. Attrill, 146 U.S. 657, 13 S. Ct. 224, 36 L. Ed. 1123 (1892); Stuart v. Stuart, 297 Conn. 26, 996 A.2d 259 (2010).

2 State ex rel. Wilcox v. Gilbert, 126 Minn. 95, 147 N.W. 953, 5 A.L.R. 1449 (1914); Rice v. CertainTeed Corp., 84 Ohio St. 3d 417, 1999-Ohio-361, 704 N.E.2d 1217, 81 A.L.R.5th 763 (1999).

3 Huntington v. Attrill, 146 U.S. 657, 13 S. Ct. 224, 36 L. Ed. 1123 (1892).
As to whether a statute is penal within the meaning of the rule that penal statutes will not be recognized or enforced in jurisdictions other than those in which they are enacted, see Am. Jur. 2d, Forfeitures and Penalties § 11.

4 Peterson v. Ball, 211 Cal. 461, 296 P. 291, 74 A.L.R. 187 (1931).

5 Incorporated Town of Bennington v. First Nat. Bank, 1935 OK 512, 172 Okla. 164, 44 P.2d 872 (1935).

6 Wise v. Harrington Grove Community Ass'n, Inc., 357 N.C. 396, 584 S.E.2d 731 (2003).

7 Rice v. CertainTeed Corp., 84 Ohio St. 3d 417, 1999-Ohio-361, 704 N.E.2d 1217, 81 A.L.R.5th 763 (1999).

8 Stuart v. Stuart, 297 Conn. 26, 996 A.2d 259 (2010).

9 Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963); In re Commitment of Fisher, 164 S.W.3d 637 (Tex. 2005).

10 Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963).

11 Meinders v. Weber, 2000 SD 2, 604 N.W.2d 248 (S.D. 2000).

12 Smith v. Doe, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003).

13 Hughes v. Board of Architectural Examiners, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).

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§ 9. Hybrid statutes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 236, 241(1), 241(2)

A statute may be in part remedial and in part penal.[1] A statute may, for the purpose of construction,[2] be penal yet remedial if designed to remove a condition inimical to the public welfare.[3] Furthermore, a statute has been regarded as both remedial and penal where it gives a right of action for an injury suffered by an individual and also imposes a forfeiture for its violation.[4] However, it has been said that a statute which imposes a penalty and also provides a remedy enforceable by an individual in a civil action and allows the recovery of damages in an amount commensurate with the injuries suffered is primarily remedial.[5]

Footnotes

1 McMaster v. South Carolina Retirement System, 362 S.C. 362, 608 S.E.2d 843 (2005).

2 As to construction of statutes, generally, see §§ 58 to 230.

3 Placek v. Edstrom, 148 Neb. 79, 26 N.W.2d 489, 174 A.L.R. 856 (1947).

4 Geisinger v. Milner Hotels, 240 Mo. App. 25, 202 S.W.2d 142 (1947).

5 Pierce v. Albanese, 144 Conn. 241, 129 A.2d 606 (1957).

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West's Key Number Digest, Statutes 227

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§ 10. Determination of statute as mandatory or directory

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 227

Statutes, or particular provisions of statutes, may be mandatory or prohibitory,[1] or they may be directory, permissive, or discretionary.[2] One provision of a statute may be mandatory and another directory.[3]

The factors considered for purposes of determining whether statutory language is directory or mandatory include: (1) legislative context and history; (2) substantive effect on a party's rights versus merely form or procedural effect; (3) existence or nonexistence of consequences for noncompliance; and (4) the subject matter of the statutory provision.[4] The test for determining whether a statutory requirement is mandatory or directory is whether the prescribed mode of action is of the essence of the thing to be accomplished, or in other words, whether it relates to matter material or immaterial, i.e., to matters of convenience or of substance; if it is a matter of convenience, the statutory provision is directory, but if it is a matter of substance, the statutory provision is mandatory.[5]

For purposes of the mandatory-directory dichotomy used to determine the effect of a public official's failure to comply with a statutory procedure, the "mandatory" or "directory" designation does not refer to whether a particular statutory requirement is obligatory or permissive but instead denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.[6] If the prescribed duty is essential to the main objective of a statute, the statute ordinarily is "mandatory," and a violation will invalidate subsequent proceedings under it. However, if the duty is not essential to accomplishing the principal purpose of the statute but is designed to ensure order and promptness in the proceeding, the statute ordinarily is "directory," and a violation will not invalidate subsequent proceedings unless prejudice is shown.[7] If the failure to follow a statute is determined to have an invalidating effect on subsequent action, the statute is said to be "mandatory"; if the failure is determined not to invalidate subsequent action, the statute is said to be "directory."[8] The determination of whether statutory language is mandatory or directory is one of legislative intent.[9]

In determining whether the legislature intended a statutory provision to be mandatory or directory, the courts consider the plain meaning of the words used, as well as the entire act, its nature and object, the consequences that would follow from each construction,[10] legislative history,[11] and statutory context.[12] Statutory requirements which are intended to serve primarily as guidelines for the orderly conduct of public business are more likely to be considered directory rather than mandatory.[13] Statutory provisions designed to secure order, system, and dispatch are generally considered directory unless accompanied by negative words.[14] The presumption that statutory language issuing a procedural command to a government official indicates an intent that the statute is directory is overcome under either of two conditions: a provision is mandatory when there is negative language prohibiting further action in the case of noncompliance or when the right that the provision is designed to protect would generally be injured under a directory reading.[15]

Generally, courts construe a statutory provision as mandatory when the power or duty to which it relates is for the public good.[16] Accordingly, a statute affecting the public interest and promoting justice which prescribes the manner of performance is generally mandatory.[17] When the object of a statutory provision is to subserve some public purpose, the provision may be held directory or mandatory as will best accomplish that purpose.[18]

CUMULATIVE SUPPLEMENT

Cases:

Unlike the word may, which implies discretion, the word shall in a statute usually connotes a requirement. Maine Community Health Options v. United States, 140 S. Ct. 1308 (2020).

Unlike the word "may," which implies discretion, the word "shall" in a statute usually connotes a requirement. Jennings v. Rodriguez, 138 S. Ct. 830 (2018).

Unlike the word "may," which implies discretion, the word "shall" in a statute usually connotes a requirement. Kingdomware Technologies, Inc. v. U.S., 136 S. Ct. 1969 (2016).

When a statute distinguishes between "may" and "shall," it is generally clear that "shall" imposes a mandatory duty. Kingdomware Technologies, Inc. v. U.S., 136 S. Ct. 1969 (2016).

The language "may" in a statute usually connotes discretion, whereas the word "must" is viewed as required or obliged by law. State v. Phillips, 210 Md. App. 239, 63 A.3d 51 (2013).

Read literally, the statutory command may is hardly a command at all. Wal-Mart Stores East, LP v. State Corporation Commission, 844 S.E.2d 676 (Va. 2020).

[END OF SUPPLEMENT]

Footnotes

1 St. Louis, I.M. & S. Ry. Co. v. McWhirter, 229 U.S. 265, 33 S. Ct. 858, 57 L. Ed. 1179 (1913).

2 Farmers' & Merchants' Bank of Monroe, N.C. v. Federal Reserve Bank of Richmond, Va., 262 U.S. 649, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A.L.R. 635 (1923).

3 State ex rel. Billington v. Sinclair, 28 Wash. 2d 575, 183 P.2d 813 (1947).

4 State v. McDaniel, 292 Kan. 443, 254 P.3d 534 (2011).

5 Francis v. Fonfara, 303 Conn. 292, 33 A.3d 185 (2012).

6 City of Santa Monica v. Gonzalez, 43 Cal. 4th 905, 76 Cal. Rptr. 3d 483, 182 P.3d 1027 (2008); People v. Delvillar, 235 Ill. 2d 507, 337 Ill. Dec. 207, 922 N.E.2d 330 (2009); In re Detention of Fowler, 784 N.W.2d 184 (Iowa 2010).

7 People v. Delvillar, 235 Ill. 2d 507, 337 Ill. Dec. 207, 922 N.E.2d 330 (2009); In re Detention of Fowler, 784 N.W.2d 184 (Iowa 2010).

A statutory provision that is directory prescribes what must be done but does not invalidate the action upon a failure to comply. Francis v. Fonfara, 303 Conn. 292, 33 A.3d 185 (2012).

8 People v. Lara, 48 Cal. 4th 216, 106 Cal. Rptr. 3d 208, 226 P.3d 322 (2010).

9 ASC Utah, Inc. v. Wolf Mountain Resorts, L.C., 2010 UT 65, 245 P.3d 184 (Utah 2010); State v. Singer, 170 Vt. 346, 749 A.2d 614 (2000).

10 Corpus Christi Housing Authority v. Lara, 267 S.W.3d 222 (Tex. App. Corpus Christi 2008).

11 Retired Employees Assn. of Orange County, Inc. v. County of Orange, 52 Cal. 4th 1171, 134 Cal. Rptr. 3d 779, 266 P.3d 287 (2011); State v. Pare, 253 Conn. 611, 755 A.2d 180 (2000).

12 State v. Pare, 253 Conn. 611, 755 A.2d 180 (2000).

13 City of St. Mary's v. St. Mary's Native Corp., 9 P.3d 1002 (Alaska 2000); ASC Utah, Inc. v. Wolf Mountain Resorts, L.C., 2010 UT 65, 245 P.3d 184 (Utah 2010).

14 West v. McDonald, 18 A.3d 526 (R.I. 2011).

15 People v. Delvillar, 235 Ill. 2d 507, 337 Ill. Dec. 207, 922 N.E.2d 330 (2009).

16 Albertson's, Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999).

17 World Pub. Co. v. Miller, 2001 OK 49, 32 P.3d 829 (Okla. 2001).

18 Galbiso v. Orosi Public Utility Dist., 182 Cal. App. 4th 652, 107 Cal. Rptr. 3d 36 (5th Dist. 2010), review denied, (June 23, 2010).

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§ 11. Effect of imposition of penalty

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 227

As a general rule of construction, where a legislative provision is accompanied by a penalty for a failure to observe it, the provision is mandatory.[1] In this regard, even though there are no negative or prohibitory words in a statute, a prohibition is generally implied from the imposition of a penalty.[2]

Footnotes

1 Territory v. Fasi, 40 Haw. 478, 1954 WL 7971 (1954); Marathon County v. Eau Claire County, 3 Wis. 2d 662, 89 N.W.2d 271 (1958).

2 Ferle v. City of Lansing, 189 Mich. 501, 155 N.W. 591 (1915).
As to the use of particular words in the statute as affecting whether it is construed to be mandatory or directory in nature, generally, see § 12.

73 Am. Jur. 2d Statutes § 12

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§ 12. Effect of words used in statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 227

The intention of the legislature as to the mandatory or directory nature of a particular statutory provision is determined primarily from the language of the statute.[1] Words or phrases which are generally regarded as making a provision mandatory include "shall"[2] and "must."[3] Accordingly, a statute's use of the mandatory term "shall" normally creates an obligation impervious to judicial discretion.[4]

Courts generally construe the word "shall" as mandatory; however, courts can construe it as merely directive when legislative intent supports such a construction.[5] The word "shall" depending on the context in which it is used is not necessarily mandatory.[6] Verbs such as "must" or "shall" denote mandatory requirements unless such construction is inconsistent with the manifest intent of the legislature or repugnant to the context of the statute.[7] The word "shall," in the absence of language in the statute showing a contrary intent on the part of the legislature, should be afforded a mandatory connotation.[8] The word "shall" creates a mandatory duty when it is juxtaposed with a substantive action verb.[9] Use of the word "shall" in a statute requiring action by a public official is directory and not mandatory unless the statute manifests a contrary intent.[10]

Linguistically, a statutory provision generally is considered directory if the requirement is stated in affirmative terms unaccompanied by negative words. Another indication that a statute is directory rather than mandatory include the use of the word "may," which ordinarily does not connote a command; rather, the word generally imports permissive conduct and the conferral of discretion.[11] In this regard, the use of the word "may" in a statute is generally permissive,[12] meaning that the action spoken of is optional or discretionary, unless it appears to require another meaning as used in the applicable statute.[13] The word "may" customarily connotes discretion[14] and that connotation is particularly apt where "may" is used in contraposition to the word "shall."[15]

The mere use of word "may" in a statute is not necessarily conclusive of a congressional intent to provide for a permissive or discretionary authority;[16] and there are cases in which words of a statute which are generally regarded as mandatory are nevertheless given a directory or permissive meaning.[17] In this regard, courts are generally reluctant to interpret the term "may" as conferring discretion where the rights of the public depend on the exercise of the performance of the duty to which it refers.[18]

Where a statute contains both the words "may" and "shall," it is presumed that the lawmaker intended to distinguish between them, "shall" being construed as mandatory and "may" as permissive.[19]

CUMULATIVE SUPPLEMENT

Cases:

In context of statutory interpretation, the word "shall" usually creates a mandate, not a liberty. Murphy v. Smith, 138 S. Ct. 784 (2018).

When construing a statute, the word "may" clearly connotes discretion. Halo Electronics, Inc. v. Pulse Electronics, Inc., 136 S. Ct. 1923 (2016).

When deciding whether a timeline is mandatory in the sense that it deprives the government of authority to act, neither the word "may" nor the word "shall" is dispositive; rather, as in any case involving statutory interpretation, the court must ascertain the legislative intent to determine what effect to give to a statute's time requirement. Olive Lane Industrial Park, LLC v. County of San Diego, 227 Cal. App. 4th 1480, 174 Cal. Rptr. 3d 577 (4th Dist. 2014).

When used in a statute, the term "may" is generally permissive rather than mandatory. James B. Nutter & Co. v. Black, 225 Md. App. 1, 123 A.3d 535 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Peabody v. Stark, 83 U.S. 240, 21 L. Ed. 311, 1872 WL 15370 (1872); Stanley v. Mueller, 211 Or. 198, 315 P.2d 125, 71 A.L.R.2d 715 (1957).

2 Tarrant Bell Property, LLC v. Superior Court, 51 Cal. 4th 538, 121 Cal. Rptr. 3d 312, 247 P.3d 542 (2011); Illinois Dept. of Healthcare and Family Services ex rel. Wiszowaty v. Wiszowaty, 239 Ill. 2d 483, 347 Ill. Dec. 673, 942 N.E.2d 1253 (2011); McGlothlin v. Christus St. Patrick Hosp., 65 So. 3d 1218 (La. 2011).

3 James Valley Grain, LLC v. David, 2011 ND 160, 802 N.W.2d 158 (N.D. 2011); Alden v. Harpers Ferry Police Civil Service Com'n, 209 W. Va. 83, 543 S.E.2d 364 (2001).

4 Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 118 S. Ct. 956, 140 L. Ed. 2d 62 (1998).

5 Hebisen v. Clear Creek Independent School Dist., 217 S.W.3d 527 (Tex. App. Houston 14th Dist. 2006); Hood v. Com., 280 Va. 526, 701 S.E.2d 421 (2010).

6 California Redevelopment Assn. v. Matosantos, 53 Cal. 4th 231, 135 Cal. Rptr. 3d 683, 267 P.3d 580 (2011).

7 Williams v. U.S., 33 A.3d 358 (D.C. 2011).

8 Bergman v. Monarch Constr. Co., 124 Ohio St. 3d 534, 2010-Ohio-622, 925 N.E.2d 116 (2010); Goldmark v. McKenna, 172 Wash. 2d 568, 259 P.3d 1095 (2011); West Virginia Employers' Mut. Ins. Co. v. Summit Point Raceway Associates, Inc., 228 W. Va. 360, 719 S.E.2d 830 (2011).

9 Wiseman v. Armstrong, 295 Conn. 94, 989 A.2d 1027 (2010).

10 Tran v. Board of Zoning Appeals of Fairfax County, 260 Va. 654, 536 S.E.2d 913 (2000).

11 Weems v. Citigroup, Inc., 289 Conn. 769, 961 A.2d 349 (2008).

12 Tarrant Bell Property, LLC v. Superior Court, 51 Cal. 4th 538, 121 Cal. Rptr. 3d 312, 247 P.3d 542 (2011); Jefferson County Bd. of Equalization v. Gerganoff, 241 P.3d 932 (Colo. 2010); McGlothlin v. Christus St. Patrick Hosp., 65 So. 3d 1218 (La. 2011).

13 Kennedy v. South Carolina Retirement System, 345 S.C. 339, 549 S.E.2d 243 (2001).

14 Jama v. Immigration and Customs Enforcement, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708, 2 A.L.R. Fed. 2d 675 (2005); Jefferson County Bd. of Equalization v. Gerganoff, 241 P.3d 932 (Colo. 2010).

15 Jama v. Immigration and Customs Enforcement, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708, 2 A.L.R. Fed. 2d 675 (2005).

16 Cortez Byrd Chips, Inc. v. Bill Harbert Const. Co., 529 U.S. 193, 120 S. Ct. 1331, 146 L. Ed. 2d 171 (2000).

17 Richbourg Motor Co. v. U.S., 281 U.S. 528, 50 S. Ct. 385, 74 L. Ed. 1016, 73 A.L.R. 1081 (1930); In re Johnson's Estate, 75 N.W.2d 313, 55 A.L.R.2d 1049 (N.D. 1956).

18 John T. v. Marion Independent School Dist., 173 F.3d 684, 134 Ed. Law Rep. 104 (8th Cir. 1999).

19 Tarrant Bell Property, LLC v. Superior Court, 51 Cal. 4th 538, 121 Cal. Rptr. 3d 312, 247 P.3d 542 (2011); Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 744 A.2d 175 (2000).

Whatever the possibility for confusion or ambiguity that might exist when either word "may" or "shall" appears alone in a statute, regulation, or other directive, when both words appear side by side in the same section of a document, normal interpretive principles dictate that courts presume that different meanings are intended. Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Com'n, 346 Or. 415, 212 P.3d 1243 (2009).

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§ 13. Necessity of compliance with provision

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 227

Compliance with a mandatory provision of a statute is a condition precedent to the privilege conferred.[1]

Observation:

When a statute is silent about the consequences of noncompliance, a court looks to the statute's purpose in determining the proper consequence of noncompliance.[2]

Even if a statutory requirement is mandatory, this does not mean that compliance is necessarily jurisdictional.[3]

Footnotes

1 Hocking v. Title Ins. & Trust Co., 37 Cal. 2d 644, 234 P.2d 625, 40 A.L.R.2d 1238 (1951).

2 Albertson's, Inc. v. Sinclair, 984 S.W.2d 958 (Tex. 1999).

3 Corpus Christi Housing Authority v. Lara, 267 S.W.3d 222 (Tex. App. Corpus Christi 2008).

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73 Am. Jur. 2d Statutes § 14

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I. Overview; General Nature and Types of Statutes

D. Mandatory, Prohibitory, or Directory Statutes; Permissive or Discretionary Statutes

§ 14. Provisions as to time

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 227

As a general rule, a statute which provides a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure; this is so unless the nature of the act to be performed or the phraseology of the statute or of other statutes relating to the same subject matter is such that the designation of time must be considered a limitation upon the power of the officer.[1] Time limits in statutes governing governmental procedures are usually deemed to be directory unless the legislature clearly expresses a contrary intent.[2] Deadlines concerned with the prompt conduct of the public business should be considered directory, not mandatory; use of the word "shall" to institute the deadline does not change this.[3] One indication that the legislature intended a time limitation to be directory instead of mandatory is if there is no sanction for noncompliance.[4] There are cases, however, in which statutory provisions as to time are regarded as mandatory, such as where the rights of the parties, or public interest, would be injuriously affected by failure to act within the time indicated.[5] A statutory time limit is mandatory only if it contains both an express requirement that an action be undertaken within a particular amount of time and a specified consequence for failure to comply with the time limit.[6]

Footnotes

1 In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655 (2011).

2 LT-WR, L.L.C. v. California Coastal Com'n, 152 Cal. App. 4th 770, 60 Cal. Rptr. 3d 417 (2d Dist. 2007), as modified, (June 21, 2007).

3 In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655 (2011).

4 Solomon v. Board of Physician Quality Assur., 132 Md. App. 447, 752 A.2d 1217 (2000); In re Application of Columbus S. Power Co., 128 Ohio St. 3d 512, 2011-Ohio-1788, 947 N.E.2d 655 (2011).

5 Carrigan v. Illinois Liquor Control Commission, 19 Ill. 2d 230, 166 N.E.2d 574 (1960).

6 State v. Singer, 170 Vt. 346, 749 A.2d 614 (2000).

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73 Am. Jur. 2d Statutes I E Refs.

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West's Key Number Digest

West's Key Number Digest, Statutes 51

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§ 15. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 51

A "reference statute" refers to or incorporates by reference another statute.[1] A "reference statute" is a statute which refers to other statutes and by reference adopts them wholly or partially and makes them applicable to the subject of the legislation.[2] Incorporation by reference is a perfectly acceptable and appropriate method of drafting legislation.[3] The purpose of such practice is to incorporate into the new act the provisions of other statutes by reference and adoption[4] and in so doing to avoid encumbering the statute books by unnecessary repetition.[5] A statute may adopt all or a part of another statute by a specific reference, and the effect is the same as if the statute or part thereof adopted had been written into the adopting statute.[6] The adoption of an earlier statute by reference makes it as much a part of the later statute as though it had been incorporated at full length.[7]

Observation:

A legislature may lawfully adopt by reference an existing law or regulation of another jurisdiction.[8]

In the absence of a clear indication to the contrary, a statute that is incorporated within an amendatory act, without any substantial or material changes in its terms, is neither deemed repealed nor deemed reenacted merely by being incorporated in the amendatory act.[9]

Footnotes

1 Hawaii Providers Network, Inc. v. AIG Hawaii Ins. Co., Inc., 105 Haw. 362, 98 P.3d 233 (2004), as amended on denial of reconsideration, (Oct. 5, 2004); Taylor v. Smithkline Beecham Corp., 468 Mich. 1, 658 N.W.2d 127 (2003).

2 Pentagon Academy, Inc. v. Independent School Dist. No. 1 of Tulsa County, 2003 OK 98, 82 P.3d 587, 184 Ed. Law Rep. 589 (Okla. 2003).

3 Boitnott v. Mayor and City Council of Baltimore, 356 Md. 226, 738 A.2d 881 (1999).

4 State ex rel. Washington Toll Bridge Authority v. Yelle, 32 Wash. 2d 13, 200 P.2d 467 (1948).

5 Apple v. City and County of Denver, 154 Colo. 166, 390 P.2d 91 (1964).

6 Tremel v. Iowa Dept. of Revenue, 785 N.W.2d 690 (Iowa 2010); Johnsen v. State, 269 Neb. 790, 697 N.W.2d 237 (2005).

7 Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

8 Baker's Supermarkets, Inc. v. State, Dept. of Agriculture, 248 Neb. 984, 540 N.W.2d 574 (1995) (disapproved of on other grounds by, American Amusements Co. v. Nebraska Dept. of Revenue, 282 Neb. 908, 807 N.W.2d 492 (2011)).

9 State ex rel. Caleb v. Beesley, 326 Or. 83, 949 P.2d 724 (1997).

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E. Reference Statutes

§ 16. Effect of subsequent amendment or repeal of adopted statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 51

As a general rule, when a statute adopts a part or all of another statute, domestic or foreign, general or local, by a specific and descriptive reference incorporated by reference, the adoption takes the statute as it exists at that time and does not include subsequent additions or modifications of the adopted statute, where it is not expressly declared by the adopting statute.[1] In this regard, when one statute references another, and the referenced statute is repealed, the meaning and scope of referencing statute do not change, absent clear legislative intent to the contrary.[2] Repeal of a statute referred to will have no effect on the reference statute unless the reference statute is repealed by implication with the referred statute.[3] The repeal of a statute cross-referenced in another statute does not render the descriptive reference inapplicable; instead, the court must look to the language of that section of the cross-referenced statute in effect at the time that the specific cross-reference was enacted.[4]

Where a statutory reference to another law is specific, the reference is to that law as it then existed and not as subsequently modified, but where the reference is general, the reference is to the law as it may be changed from time to time[5] unless the general law referred to is part of the same statute or enactment.[6] In this regard, there is authority for the view that when the reference is general, the referring statute takes the law referred to not only in its contemporary form but also as it may be subjected to elimination altogether by repeal.[7] However, the adoption in a special or local law of the provisions of a general law does not carry with it the adoption of changes afterward made in the general law.[8]

There is authority for the view that where one section is made a part of another section of the same act by specific reference, the adopting section takes the adopted section as it exists at the time of adoption and does not include subsequent additions or modifications unless it does so by express intent;[9] however, there is also authority for the contrary view.[10]

CUMULATIVE SUPPLEMENT

Cases:

Although the False Claims Act (FCA) abrogated the common law in certain respects, including that the Act's scienter requirement required no proof of specific intent to defraud, the court would presume, when interpreting common-law terms used in the Act, that Congress retained all other elements of common-law fraud that were consistent with the statutory text, because there were no textual indicia to the contrary. 31 U.S.C.A. § 3729 et seq. Universal Health Services, Inc. v. U.S., 136 S. Ct. 1989 (2016).

Where a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified. Quesada v. Herb Thyme Farms, Inc., 222 Cal. App. 4th 642, 2013 WL 6925692 (2d Dist. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Rainwater v. U.S., 356 U.S. 590, 78 S. Ct. 946, 2 L. Ed. 2d 996 (1958); Medical Ass'n of Georgia v. Joint City of Atlanta-Fulton County Bd. of Tax Assessors, 132 Ga. App. 188, 207 S.E.2d 673 (1974).

2 In re R.J.J., 959 S.W.2d 185 (Tex. 1998).
As to the revival of a repealed statute by reference thereto, see § 300.

3 Hawaii Providers Network, Inc. v. AIG Hawaii Ins. Co., Inc., 105 Haw. 362, 98 P.3d 233 (2004), as amended on denial of reconsideration, (Oct. 5, 2004).

4 Integrated Health Care Services, Inc. v. Lang-Redway, 840 So. 2d 974 (Fla. 2002).

5 People v. Hernandez, 30 Cal. 4th 835, 134 Cal. Rptr. 2d 602, 69 P.3d 446 (2003), as modified, (Aug. 13, 2003); Reino v. State, 352 So. 2d 853 (Fla. 1977).

6 Reino v. State, 352 So. 2d 853 (Fla. 1977).

7 Hawaii Providers Network, Inc. v. AIG Hawaii Ins. Co., Inc., 105 Haw. 362, 98 P.3d 233 (2004), as amended on denial of reconsideration, (Oct. 5, 2004); Union Cemetery v. City of Milwaukee, 13 Wis. 2d 64, 108 N.W.2d 180 (1961).

8 Campbell v. Hunt, 115 Ga. App. 682, 155 S.E.2d 682 (1967); Hawaii Providers Network, Inc. v. AIG Hawaii Ins. Co., Inc., 105 Haw. 362, 98 P.3d 233 (2004), as amended on denial of reconsideration, (Oct. 5, 2004).

9 Hassett v. Welch, 303 U.S. 303, 58 S. Ct. 559, 82 L. Ed. 858 (1938).

10 American Bank v. Goss, 236 N.Y. 488, 142 N.E. 156 (1923).

73 Am. Jur. 2d Statutes II A Refs.

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II. Enactment

A. In General; Authority

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Research References

West's Key Number Digest

West's Key Number Digest, Statutes 1, 2, 4, 5, 129, 130, 133

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West's A.L.R. Digest, Statutes 1, 2, 4, 5, 129, 130, 133

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II. Enactment

A. In General; Authority

§ 17. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 1, 2, 4

While solely as a matter of federal constitutional law, the states are free to allocate the lawmaking function to whatever branch of state government they may choose.[1] A state's legislative power is ordinarily exercised through the two branches forming the legislature or general assembly—the senate and the assembly or house of representatives.[2]

Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.[3]

CUMULATIVE SUPPLEMENT

Cases:

When Congress invokes more than one source of federal power to enact a law, it does so as a form of insurance, on the off chance that the first source of authority exceeds its grasp; it does not invoke two sources of authority in order to permit two interpretations of the same phrase. Haight v. Thompson, 763 F.3d 554 (6th Cir. 2014).

[END OF SUPPLEMENT]

Footnotes

1 Am. Jur. 2d, Constitutional Law § 247.

2 Am. Jur. 2d, States, Territories and Dependencies § 38.

3 U.S. v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (2000).

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73 Am. Jur. 2d Statutes § 18

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II. Enactment

A. In General; Authority

§ 18. Amendments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 129, 130, 133

The legislative power includes the power to amend existing laws, as well as the power to enact laws,[1] subject to constitutional restrictions and inhibitions, such as the prohibition against the extinguishment of vested rights which have been acquired under the former law,[2] or the impairment of the obligations of a contract,[3] or the denial of due process of law.[4] There can be no vested right in an existing law which precludes its change.[5] The legislature has the power to change, alter, or amend a statute,[6] and one legislature cannot abridge the power of a succeeding legislature to amend statutes.[7]

An amendment to a statute is a re-enactment of the statute amended.[8] Generally, a repealed act cannot be amended since an amendatory act alters, modifies, or adds to a prior statute.[9]

Some state constitutions prohibit amendment of a statute by reference to title only, and require amended statutes to be reenacted and published in full, as amended.[10] A constitutional provision that no act may be revised or amended by mere reference to its title does not require an amendatory act to set forth all of the sections of an original act but only those sections that are actually being amended.[11]

Footnotes

1 Ochoa v. Hernandez y Morales, 230 U.S. 139, 33 S. Ct. 1033, 57 L. Ed. 1427 (1913).
2 Am. Jur. 2d, Constitutional Law §§ 744 to 752.
3 Am. Jur. 2d, Constitutional Law §§ 775 to 783.
4 Am. Jur. 2d, Constitutional Law § 649.

5 Am. Jur. 2d, Constitutional Law § 748.

6 White v. Heng Ly Lim, 2009 OK 79, 224 P.3d 679 (Okla. 2009); Such v. State, 950 A.2d 1150 (R.I. 2008); Washington State Farm Bureau Federation v. Gregoire, 162 Wash. 2d 284, 174 P.3d 1142 (2007).

7 Reichelderfer v. Quinn, 287 U.S. 315, 53 S. Ct. 177, 77 L. Ed. 331, 83 A.L.R. 1429 (1932); People v. Gardner, 482 Mich. 41, 753 N.W.2d 78 (2008); Washington State Farm Bureau Federation v. Gregoire, 162 Wash. 2d 284, 174 P.3d 1142 (2007).

8 Citibank, N. A. v. City of New York Finance Administration, 43 N.Y.2d 425, 401 N.Y.S.2d 1001, 372 N.E.2d 789 (1977), judgment rev'd on other grounds, 440 U.S. 447, 99 S. Ct. 1201, 59 L. Ed. 2d 445 (1979).

9 Taylor v. Canyon County Bd. of Com'rs, 147 Idaho 424, 210 P.3d 532 (2009).

10 Hemba v. Mississippi Dept. of Corrections, 998 So. 2d 1003 (Miss. 2009).

11 American Legion Post #149 v. Washington State Dept. of Health, 164 Wash. 2d 570, 192 P.3d 306 (2008).

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73 Am. Jur. 2d Statutes § 19

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II. Enactment

A. In General; Authority

§ 19. Scope of legislation enacted at special sessions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 5

In the absence of a constitutional provision limiting the power of the legislature to pass laws at a special session, its legislative power, when convened in special session, is as broad as a regular session.[1] However, constitutional provisions have been adopted in some jurisdictions which impose limitations upon the power of the legislature to enact laws when convened in special session.[2] For example, some constitutional provisions provided that business other than that set forth in the governor's call for the special legislative session cannot be transacted[3] or that there may be no legislation upon subjects other than those designated in the proclamation of the governor calling such session.[4] A state legislature, while in special session, may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened, with the purpose or subject as stated in the proclamation to be determined by an analysis and construction of the proclamation as a whole.[5] Under such a provision, at a special session, the legislature may consider not only the legislation specifically mentioned in the governor's call but also such other legislation as may incidentally arise out of the call and any necessary detail in accomplishing the purpose of the call.[6]

CUMULATIVE SUPPLEMENT

Cases:

Legislature lacked authority to repeal version of sentencing statutes prescribing penalty for Class IA felony as life imprisonment during special legislative session called for narrow purpose of considering changes to existing statutes pertaining to death penalty. Const. Art. 4, § 8; Neb.Rev.St. §§ 28-105(1), 29-2520(1). State v. Conover, 270 Neb. 446, 703 N.W.2d 898 (2005).

[END OF SUPPLEMENT]

Footnotes

1 Richards Furniture Corp. v. Board of County Com'rs of Anne Arundel County, 233 Md. 249, 196 A.2d 621 (1963); Starr v. Governor, 154 N.H. 174, 910 A.2d 1247 (2006).

2 First Nat. Bank of Stuttgart v. Clinton, 304 Ark. 411, 802 S.W.2d 928 (1991); City of Edwardsville v. Jenkins, 376 Ill. 327, 33 N.E.2d 598, 134 A.L.R. 891 (1941).

3 First Nat. Bank of Stuttgart v. Clinton, 304 Ark. 411, 802 S.W.2d 928 (1991).

4 Com. v. Harris, 572 Pa. 489, 817 A.2d 1033 (2002).

5 State v. Conover, 270 Neb. 446, 703 N.W.2d 898 (2005).

6 Arkansas Motor Carriers Ass'n, Inc. v. Pritchett, 303 Ark. 620, 798 S.W.2d 918 (1990); Wieder v. People, 722 P.2d 396 (Colo. 1986).

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73 Am. Jur. 2d Statutes II B Refs.

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B. Manner of Enactment

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West's Key Number Digest

West's Key Number Digest, Statutes 6, 11, 12(1), 12(2), 14 to 16(4), 18 to 20, 23, 25.1 to 32, 37 to 40

A.L.R. Library

A.L.R. Index, Statutes
West's A.L.R. Digest, Statutes 6, 11, 12(1), 12(2), 14 to 16(4), 18 to 20, 23, 25.1 to 32, 37 to 40

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Am. Jur. Pleading and Practice Forms, Constitutional Law § 38

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II. Enactment

B. Manner of Enactment

1. In General

§ 20. Rules of legislature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 11

Although rules controlling legislative procedure are usually formulated or adopted by legislative bodies themselves, and the observance of such rules is a matter that is entirely subject to legislative control and discretion, a legislature may not adopt rules for the passage of statutes which conflict with the provisions of the governing constitution.[1] Rules of procedure passed by one legislative body are not binding upon subsequent legislative bodies operating within the same jurisdiction.[2] In some jurisdictions, official session laws are required by statute to include the date that a bill becomes law with the governor's approval.[3]

Practice Tip:

Statutory requirements as to notice to be published in the Federal Register with regard to certain documents and information notice requirements do not apply to federal criminal statutes.[4]

Footnotes

1 State v. Gray, 221 La. 868, 60 So. 2d 466 (1952).

2 South Georgia Power Co. v. Baumann, 169 Ga. 649, 151 S.E. 513 (1929).

3 Periconi v. State, 91 Misc. 2d 823, 398 N.Y.S.2d 959 (Ct. Cl. 1977).

4 U.S. v. Schiefen, 139 F.3d 638, 1998 WL 122327 (8th Cir. 1998) (referring to the requirements of 5 U.S.C.A. § 552 and 44 U.S.C.A. § 1505(a)).

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II. Enactment

B. Manner of Enactment

1. In General

§ 21. Authority and province of courts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 11

Although the observance of rules controlling legislative procedure is not subject to review by the courts,[1] and the view has been followed that the failure of the legislature to follow directory provisions of a state constitution, respecting introduction and passage of legislation, does not present a justiciable question,[2] there is also authority to the effect that since there is no other available tribunal, resort must be had to the courts of the state to determine whether the legislature has complied with applicable constitutional provisions in regard to the manner of enactment of statutes.[3]

A law passed in violation of the Federal Constitution's Origination Clause, which mandates that all bills for raising revenue must originate in the United States House of Representatives,[4] is not rendered immune from judicial scrutiny by the fact that it passes both houses of Congress and is signed by the President of the United States even though the Origination Clause itself is silent as to the consequences of its violation.[5]

Footnotes

1 State v. Gray, 221 La. 868, 60 So. 2d 466 (1952).

2 Mikell v. School Dist. of Philadelphia, 359 Pa. 113, 58 A.2d 339, 4 A.L.R.2d 962 (1948).

3 Ritzman v. Campbell, 93 Ohio St. 246, 112 N.E. 591 (1915).

4 U.S. Const. Art. I, § 7, cl. 1, as discussed in § 22.

5 U.S. v. Munoz-Flores, 495 U.S. 385, 110 S. Ct. 1964, 109 L. Ed. 2d 384 (1990).

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73 Am. Jur. 2d Statutes § 22

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II. Enactment

B. Manner of Enactment

2. Origin and Introduction

§ 22. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 6, 12(1), 12(2)

Bills may originate in either house of the legislature.[1] However, some state constitutions require that all revenue-raising bills originate in the State House of Representatives.[2] This rule also applies to Congress as the Federal Constitution's Origination Clause mandates that all bills for raising revenue must originate in the United States House of Representatives.[3]

Observation:

State constitutions[4] or statutes[5] sometimes contain provisions prohibiting the introduction of bills during the closing days of a session.

Footnotes

1 People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), aff'd, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

2 Opinion of the Justices, 379 So. 2d 1267 (Ala. 1980).

3 U.S. Const. Art. I, § 7, cl. 1.

4 Spa Kennel Club, Inc. v. Dunaway, 241 Ark. 51, 406 S.W.2d 128 (1966).

5 Gulledge v. Barclay, 350 Ark. 98, 84 S.W.3d 850 (2002).

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73 Am. Jur. 2d Statutes § 23

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II. Enactment

B. Manner of Enactment

3. Consideration and Passage

§ 23. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 18, 37

Laws are presumed to have been passed with deliberation.[1] The legislatures of the several states have inherent power to appoint legislative committees as a means of obtaining necessary information to aid them in preparing and enacting laws.[2] Legislators are not, however, required to hold special hearings with witnesses to inform them of conditions or to act through investigating committees before passing legislation.[3] Neither is the legislature, in enacting a law, bound by facts submitted in the report of a committee or required to ignore the collective knowledge of its members.[4] A legislature's failure to act on a pending bill or other matters needing legislative approval, before the legislature adjourns sine die, effectively kills that bill or matter.[5]

Observation:

Under federal law, every bill in each House of Congress must, when such bill or resolution passes either House, be printed, and such printed copy will be called the "engrossed bill." The engrossed bill must be signed by the Clerk of the House or the Secretary of the Senate and must then be sent to the other House and in that form is to be dealt with by that House and its officers. If passed, the engrossed bill must be returned, signed by the Clerk or Secretary. When the bill has passed both Houses, it must be printed and is then called the "enrolled bill" and must be signed by the presiding officers of both Houses and sent to the President of the United States. During the last six days of a session, the engrossing and enrolling of bills may be done otherwise than as prescribed by these requirements upon the order of Congress by concurrent resolution.[6]

Footnotes

1 State ex rel. Stearns County v. Klasen, 123 Minn. 382, 143 N.W. 984 (1913).

2 Am. Jur. 2d, States, Territories, and Dependencies § 52.

3 Herrin v. Arnold, 1938 OK 440, 183 Okla. 392, 82 P.2d 977, 119 A.L.R. 1471 (1938).

4 Appeal of Van Dyke, 217 Wis. 528, 259 N.W. 700, 98 A.L.R. 1332 (1935).

5 Watkins v. Board of Trustees of Alabama State University, 703 So. 2d 335, 122 Ed. Law Rep. 1316 (Ala. 1997).

6 1 U.S.C.A. § 106.

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73 Am. Jur. 2d Statutes § 24

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II. Enactment

B. Manner of Enactment

3. Consideration and Passage

§ 24. Reading of bill

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 15

Forms

Am. Jur. Pleading and Practice Forms, Constitutional Law § 38 (Complaint, petition, or declaration—Allegation—Bill read fewer times than required by state constitution)

State constitutional provisions sometimes require that before a bill is passed, it must be read by title on three different days in each house of the state legislature.[1] Some state constitutions require that the content of a bill remain unchanged for one calendar day before the third reading and passage.[2] A constitutional provision requiring the reading of a bill has been construed not to require that everything that is to become a law by the adoption of the bill must be read, it being enough that the bill be read alone.[3] Other state constitutions provide that no bill may be passed unless it has been printed and on the desks of the members of the legislature for three days prior to passage or unless the governor certifies the facts which in his or her opinion necessitate an immediate vote thereon.[4]

CUMULATIVE SUPPLEMENT

Cases:

State Constitution requires that Governor set forth some facts in a message of necessity for immediate vote on a bill by both houses of legislature, but the sufficiency of those facts is not subject to judicial review. McKinney's Const. Art. 3, § 14. Schulz v. State of New York Executive, 19 N.Y.S.3d 92 (App. Div. 3d Dep't 2015).

[END OF SUPPLEMENT]

Footnotes

1 Friends of Parks v. Chicago Park Dist., 203 Ill. 2d 312, 271 Ill. Dec. 903, 786 N.E.2d 161 (2003); Weinstock v. Holden, 995 S.W.2d 411 (Mo. 1999).

2 Application of Forsythe, 185 N.J. Super. 582, 450 A.2d 594 (App. Div. 1982), judgment aff'd, 91 N.J. 141, 450 A.2d 499 (1982).

3 Tanner v. Premier Photo Service, Inc., 147 W. Va. 37, 125 S.E.2d 609 (1962).

4 Maybee v. State, 4 N.Y.3d 415, 796 N.Y.S.2d 18, 828 N.E.2d 975 (2005).

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§ 25. Vote on bill

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 19

Constitutional requirements as to the number of members required to pass a bill are regarded as mandatory.[1]

There is authority for the rule that the presumption that a bill signed by the speakers of the two legislative houses and approved by the governor was regularly passed by the legislature controls unless it affirmatively appears that the bill was defeated by final action in one or the other house.[2] According to some courts, definiteness in the record is essential to establishing either complete rejection as a final act or failure to accord approval by a constitutional majority and that in the absence of this essential, the presumption of regularity of passage obtains.[3]

Under the doctrine that enrolled bills import absolute verity,[4] it may not be shown that the bill did not receive the concurrence of a majority of the members of the legislature.[5]

Footnotes

1 Ritzman v. Campbell, 93 Ohio St. 246, 112 N.E. 591 (1915).

2 Wright v. Wiles, 173 Tenn. 334, 117 S.W.2d 736, 119 A.L.R. 456 (1938).

3 Bachelor v. State, 216 Ala. 356, 113 So. 67 (1927); State v. Hannum, 158 Tenn. 119, 11 S.W.2d 858 (1928).

4 § 42.

5 Williams v. MacFeeley, 186 Ga. 145, 197 S.E. 225 (1938).

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§ 26. Vote on bill—Number of votes required

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 20

The general rule is that where the constitution does not expressly require a larger number, laws may be enacted by a majority vote.[1] In particular situations, however, a concurrence of a larger percentage than a majority has been required.[2] Where a two-thirds vote, or other proportion, of a legislative body is prescribed as necessary for any purpose, the stipulated percentage of those who are present and constitute a quorum is understood, unless special terms are employed, clearly indicating a different intention.[3]

Footnotes

1 U.S. v. Ballin, 144 U.S. 1, 12 S. Ct. 507, 36 L. Ed. 321 (1892).

2 Grebner v. State, 480 Mich. 939, 744 N.W.2d 123 (2007); State v. Drej, 2010 UT 35, 233 P.3d 476 (Utah 2010).

3 State v. Missouri Pac. Ry. Co., 96 Kan. 609, 152 P. 777 (1915), aff'd, 248 U.S. 276, 39 S. Ct. 93, 63 L. Ed. 239, 2 A.L.R. 1589 (1919).

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§ 27. Amendments of bills

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 16(1) to 16(4), 19, 23

In the absence of any limitation of or restriction in the applicable state constitution, the legislature, having full control of the passage of bills, may, as permitted by its own rules, make such amendments germane thereto as in its judgment may be necessary or expedient.[1] Some state constitutions, however, prohibit the alteration of a bill so as to change its original purpose.[2] The restriction, in the constitutional provision prohibiting a bill from being so amended in its passage through either house of the legislature as to change its original purpose, is against the introduction of matter that is not germane to the object of the legislation or that is unrelated to its original subject[3] and to keep individual members of the legislature and the public fairly apprised of the subject matter of pending laws and to insulate the governor from "take-it-or-leave-it" choices when contemplating the use of the veto power.[4] The original purpose of a bill must be viewed in reasonably broad terms when entertaining a constitutional challenge to legislation as having been so altered or amended as to change its original purpose.[5] A constitutional provision prohibiting the alteration of a bill so as to change its original purpose must be given a practical and liberal construction to carry out its evident purpose, and all doubts should be reserved in favor of an act of the legislature.[6] A court entertaining a constitutional challenge to legislation as having been so altered or amended as to change its original purpose must conduct a two-part inquiry: (1) the court will consider the original purpose of the legislation and compare it to the final purpose and determine whether there has been an alteration or amendment so as to change the original purpose, and (2) a court will consider whether, in its final form, the title and contents of the bill are deceptive.[7]

"Original purpose," within the meaning of a constitutional provision prohibiting a bill from being so amended in its passage through either house of the legislature as to change its original purpose, refers to the general purpose of the bill, and the original purpose is measured at the time of the bill's introduction.[8] The title of a bill may be changed as a bill progresses through the legislature, without violating the provision of the state constitution prohibiting amendments not germane to the bill's original

purpose.[9] Extensions or limitations of a bill's scope, even new matter, are not categorically prohibited by the provision of the state constitution prohibiting amendments not germane to a bill's original purpose.[10]

Once a bill has been introduced and passed in one house and proceeds to the other house and the other house adds certain amendments, the originating house can either concur in the amendments by a majority vote entered on the legislative journal or adopt the report of a conference committee by a majority on a yea and nay vote. Under some state constitutional provisions, an amendment to a bill may not be adopted except by a majority of the house in which the amendment is offered unless the amendment with the names of those voting for and against it are entered at length on the journal of the house in which the amendment is adopted. Such a procedure does not require a vote on the amended bill in its entirety but only requires that the journal show a concurrence in the amendment although the amendment must affirmatively appear upon the journal, and the journal entry must show that it was concurred in by yea and nay vote.[11]

CUMULATIVE SUPPLEMENT

Cases:

Passage of bill that enacted new sections authorizing school districts and community schools to create community learning centers, which was amended after second readings in House of Representatives and Senate to include language modifying structure of academic distress commissions, did not violate Three Reading Rule, even though original bill comprised ten pages and final bill comprised 77 pages; original legislation and amended final version involved same general subject area of education and specific subject of improving underperforming schools, and legislators who opposed amendments were able to present their arguments to their colleagues. Ohio Const. art. 2, § 15(C); Ohio Rev. Code Ann. §§ 3302.10, 3302.11. Youngstown City School District Board of Education v. State, 2018-Ohio-2532, 104 N.E.3d 1060 (Ohio Ct. App. 10th Dist. Franklin County 2018).

[END OF SUPPLEMENT]

Footnotes

1 State v. Ryan, 92 Neb. 636, 139 N.W. 235 (1912).

2 St. Louis County v. Prestige Travel, Inc., 344 S.W.3d 708 (Mo. 2011); Stilp v. Com., 588 Pa. 539, 905 A.2d 918 (2006).

3 St. Louis County v. Prestige Travel, Inc., 344 S.W.3d 708 (Mo. 2011).

4 Missouri Ass'n of Club Executives v. State, 208 S.W.3d 885 (Mo. 2006).

5 Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com., 583 Pa. 275, 877 A.2d 383 (2005).

6 Barclay v. Melton, 339 Ark. 362, 5 S.W.3d 457 (1999).

7 Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com., 583 Pa. 275, 877 A.2d 383 (2005).

8 St. Louis County v. Prestige Travel, Inc., 344 S.W.3d 708 (Mo. 2011).

9 Missouri State Medical Ass'n v. Missouri Dept. of Health, 39 S.W.3d 837 (Mo. 2001).

10 St. Louis County v. Prestige Travel, Inc., 344 S.W.3d 708 (Mo. 2011).

11 Opinion of the Justices, 672 So. 2d 1290 (Ala. 1996).

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§ 28. Signatures of presiding legislative officers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 18

State constitutions may contain requirements for the signing of bills by presiding legislative officers. In this regard, for example, specific constitutional provisions have required the presiding officer to sign all bills passed by the legislature;[1] have provided that a bill which has passed both houses of the general assembly must be signed by the presiding officer of each house to certify that the procedural requirements for passage have been met, prior to presenting the bill to the governor for his or her approval;[2] and that the presiding officer of each house, not later than a specified number of days following adjournment, must sign all bills passed by the legislature, certifying to their accuracy and authenticity as enacted by the legislature.[3]

It has sometimes been said that the purpose of a rule requiring the signatures of the presiding officers of the legislature preparatory to its becoming a law is to provide a safe and convenient method of signifying to the governor what bills are ready for the governor's approval or rejection.[4] Furthermore, it has been stated that the purpose of such a constitutional provision is to give accuracy and authenticity to the legislation which resulted in the enactment of a bill.[5] Under federal law, an engrossed bill must be signed by the Clerk of the House or the Secretary of the Senate before being sent to the other House. If passed, the engrossed bill must be returned and signed by the Clerk or Secretary. When the bill has passed both Houses, that is, when it is an "enrolled bill,"[6] it must be signed by the presiding officers of both Houses and sent to the President of the United States.[7]

Footnotes

1 Opinion of the Judges, 84 S.D. 3, 166 N.W.2d 427 (1969).

2 State ex rel. Grendell v. Davidson, 86 Ohio St. 3d 629, 1999-Ohio-130, 716 N.E.2d 704 (1999).

3 Dean v. Rampton, 538 P.2d 169 (Utah 1975).
4 Opinion of the Judges, 84 S.D. 3, 166 N.W.2d 427 (1969).
5 Dean v. Rampton, 538 P.2d 169 (Utah 1975).
6 § 23.
7 1 U.S.C.A. § 106.

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§ 29. Signatures of presiding legislative officers—Effect of officers' failure to sign; remedy in mandamus

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 18, 40

There is authority for the view that where a constitutional provision has been construed to require the signatures of the presiding officers of both houses to be affixed to a bill, the absence of such signatures is fatal to the bill.[1] However, the view has also been followed that the failure of the presiding officer of the legislature to sign a bill duly passed and signed by the governor does not invalidate the measure where the courts can determine from the journals of each house whether the proceedings relating to the enactment were accurate and authentic.[2] Furthermore, under a constitutional provision requiring the signing within a specified time after passage, a failure on the part of the presiding officer to sign a bill within such time has been construed not to invalidate an act thereafter duly authenticated and approved by the governor.[3]

Practice Tip:

Under the view that it is the constitutional responsibility of the presiding officers of each house to sign a certification where all of the procedural requirements for passage have been met is a ministerial duty and is mandatory,[4] mandamus will lie to compel the performance of this clear legal duty by a public officer; in mandamus, an order may issue to a presiding officer to show cause why he or she has not signed.[5]

Footnotes

1 Maloney v. Rhodes, 45 Ohio St. 2d 319, 74 Ohio Op. 2d 499, 345 N.E.2d 407 (1976); Opinion of the Judges, 84 S.D. 3, 166 N.W.2d 427 (1969).

2 Dean v. Rampton, 538 P.2d 169 (Utah 1975).

3 Boyle v. New Orleans Public Service, Inc., 163 So. 2d 145 (La. Ct. App. 4th Cir. 1964).

4 § 28.

5 Maloney v. Rhodes, 45 Ohio St. 2d 319, 74 Ohio Op. 2d 499, 345 N.E.2d 407 (1976).

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§ 30. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 25.1, 26, 31

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Schizer, Fiscal Policy in an Era of Austerity, 35 Harv. J.L. & Pub. Pol'y 453, 486 (2012)

Siewert, The Cloying Use of Unallotment: Curbing Executive Branch Appropriation Reductions During Fiscal Emergencies, 95 Minn. L. Rev. 1071 (2011)

Wade, The Origin and Evolution of Partial Veto Power, 81-MAR Wis. Law. 12 (2008)

In passing on laws that are submitted for approval, the executive is regarded as a component part of the lawmaking body[1] and as engaged in the performance of a legislative[2] rather than an executive duty.[3]

Definition:

A "veto" is the refusal of assent by the executive officer whose assent is necessary to perfect a law which has been passed by the legislative body.[4]

Under some constitutions, the chief executive has a qualified veto power upon legislation.[5] The veto power can be exercised only when clearly authorized by the constitution, and the language conferring it is to be strictly construed.[6] A governor's powers include the power to veto legislation to the extent that this power is vested in him or her by the state constitution.[7] A governor's constitutional veto power is intended to be a negative power, the power to nullify, or at least suspend legislative intent, and it is not designed to alter or amend legislative intent.[8]

The chief executive, in the absence of express authorization, may not modify or change the effect of a proposed law or do anything concerning it except approve or disapprove of it as a whole.[9] Constitutional provisions in some states, however, modify this rule by empowering the governor to partially veto appropriation bills.[10]

As a governor is part of the legislative process, a veto renders legislative action as if it had not occurred.[11]

CUMULATIVE SUPPLEMENT

Cases:

The supreme executive power of the state is vested in the Governor, whose principal function, insofar as legislatively enacted law is concerned, is to faithfully execute the laws; however, Governor has the power to exercise veto control over the enactments of the Legislature to the extent that this power or authority is vested in her by the Constitution. West's NMSA Const. Art. 4, § 22. State ex rel. Cisneros v. Martinez, 2015-NMSC-001, 340 P.3d 597 (N.M. 2014).

Governor's partial veto of bill appropriating $2.25 million for entrepreneurship grants and vouchers, vetoing the language "$300,000 to an organization that provides workplace safety," was within the Governor's item veto authority, and the result of the veto was that the larger appropriation in which the item was included would be as a matter of law reduced by the amount of the item. N.D. Const. art. 5, § 9. North Dakota Legislative Assembly v. Burgum, 2018 ND 189, 916 N.W.2d 83 (N.D. 2018).

The Governor is not empowered to exercise her veto pen in a manner that broadly affects public policy and attempts to alter legislative intent by reaching back to repeal a permanent law. Const. Art. 4, § 21. Amisub of South Carolina, Inc. v. South Carolina Dept. of Health and Environmental Control, 757 S.E.2d 408 (S.C. 2014).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Fire Ins. Co. v. Barker Car Rental, 132 F.3d 1153 (7th Cir. 1997) (applying Illinois law); Perez v. Rent-A-Center, Inc., 186 N.J. 188, 892 A.2d 1255 (2006), clarified on denial of reconsideration, 188 N.J. 215, 902 A.2d 1232 (2006).

2 U.S. Fire Ins. Co. v. Barker Car Rental, 132 F.3d 1153 (7th Cir. 1997) (applying Illinois law); Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

3 U.S. Fire Ins. Co. v. Barker Car Rental, 132 F.3d 1153 (7th Cir. 1997) (applying Illinois law).

4 New Hampshire Health Care Ass'n v. Governor, 161 N.H. 378, 13 A.3d 145 (2011).

5 Williams v. Kerner, 30 Ill. 2d 11, 195 N.E.2d 680 (1963).

6 Drummond v. Beasley, 331 S.C. 559, 503 S.E.2d 455 (1998).

7 Jubelirer v. Rendell, 598 Pa. 16, 953 A.2d 514 (2008).

8 Florida Senate v. Harris, 750 So. 2d 626 (Fla. 1999).

9 Patterson v. Dempsey, 152 Conn. 431, 207 A.2d 739 (1965).

10 Am. Jur. 2d, Public Funds § 32.

11 Washington State Legislature v. Lowry, 131 Wash. 2d 309, 931 P.2d 885 (1997).

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§ 31. Presentation of bill to executive; signing of bill upon approval

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 27, 31

Constitutional provisions sometimes provide that every bill passed by the legislature must, before becoming a law, be presented to the chief executive for approval or rejection.[1] Thus, for example, the Federal Constitution requires that every bill which has passed the House of Representatives and the Senate must, before becoming a law, be presented to the President, who, if he or she approves of the bill, he or she must sign it.[2] However, under the applicable federal statute, it is provided that an "enrolled bill,"[3] after being signed by the presiding officers of both Houses,[4] must be sent to the President of the United States.[5]

Such presentation provisions are generally regarded as mandatory.[6] If there is a material variance between the bill passed and the bill presented to the chief executive, the latter cannot properly be said to be the same bill which was passed by the legislature, and the entire enactment is invalidated.[7] Absolute correspondence, however, is not required.[8] Under a state constitution, if the governor approves legislation, the governor must sign it, and thereupon it becomes operative, and if the governor disproves of legislation, he or she can veto it or take other action consistent with the constitution, but this constitutional directive does not give the governor the power to repeal one of two bills solely based on the chronological order he or she signs legislation when each bill has passed the General Assembly but neither has received his or her signature.[9] The General Assembly does not have constitutional free rein to withhold a bill that it has enacted from timely presentment to the governor.[10] A constitutional provision directing that bills shall be presented to the governor "when finally passed" requires that the legislature must present such bills to the governor with no more delay than is reasonably necessary to complete any ministerial tasks and otherwise effect their orderly transmittal.[11]

Observation:

The practice of withholding from a governor those bills as to which both houses of the legislature have formally acted, which effectively blocks executive action in approving or vetoing the bill, violates a constitutional provision providing that every bill which has passed both houses of the legislature must, before it becomes law, be presented to governor.[12]

Practice Tip:

The governor's signature, when it is shown to have been attached to a bill, is the exclusive and conclusive evidence of his or her unqualified approval, and the result being law, no evidence, nor judgment of any court, can be allowed to modify or change its terms or effect, or prevent or impair its complete operative force.[13]

Footnotes

1 Campaign For Fiscal Equity, Inc. v. Marino, 87 N.Y.2d 235, 638 N.Y.S.2d 591, 661 N.E.2d 1372 (1995); Gilmore v. Landsidle, 252 Va. 388, 478 S.E.2d 307 (1996).

2 U.S. Const. Art. I, § 7, cl. 2.

3 As to such a bill, generally, see § 23.

4 § 28.

5 1 U.S.C.A. § 106.

6 State ex rel. Foster v. Naftalin, 246 Minn. 181, 74 N.W.2d 249 (1956).

7 King Lumber Co. v. Crow, 155 Ala. 504, 46 So. 646 (1908).

8 State ex rel. Foster v. Naftalin, 246 Minn. 181, 74 N.W.2d 249 (1956).

9 Such v. State, 950 A.2d 1150 (R.I. 2008).

10 State ex rel. Ohio Gen. Assembly v. Brunner, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912 (2007), amended on reconsideration on other grounds, 115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232 (2007).

11 Brewer v. Burns, 222 Ariz. 234, 213 P.3d 671 (2009).

12 Campaign For Fiscal Equity, Inc. v. Marino, 87 N.Y.2d 235, 638 N.Y.S.2d 591, 661 N.E.2d 1372 (1995).

13 Pulskamp v. Martinez, 2 Cal. App. 4th 854, 3 Cal. Rptr. 2d 607 (2d Dist. 1992).

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a. In General

§ 32. Objections by executive to vetoed bill; return to house of origin; reconsideration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 26, 32

Under some state constitutions, the governor must return any vetoed bill, with a statement of his or her objections, to the house of origin.[1] Under the Federal Constitution, if the President does not approve of a bill presented to him or her, he or she must return it, with his objections, to that house in which the bill originated.[2] Such provisions are generally considered to be mandatory.[3]

The requirement that the governor explain the reasons for a veto serves at least two principal functions. It allows the legislature to determine what it must do to avoid incurring another veto. Also, it forces the governor to reveal his or her reasoning so that both the legislature and the people might know whether or not he or she was motivated by conscientious convictions in recording his or her disapproval.[4]

Under the Federal Constitution, after a vetoed bill is returned to the house in which the bill originated, such body must enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration, two-thirds of that house agrees to pass the bill, it must be sent, together with the objections, to the other house, by which it must likewise be reconsidered, and if approved by two-thirds of that house, it will become law. In all such cases, the votes of both houses must be determined by yeas and nays, and the names of the persons voting for and against the bill must be entered on the journal of each house respectively.[5]

Practice Tip:

A veto message expressing a governor's reason for a veto does not have the force of law and is, thus, not subject to challenge before the Supreme Court.[6]

Footnotes

1 Alaska Legislative Council v. Knowles, 21 P.3d 367 (Alaska 2001).

2 U.S. Const. Art. I, § 7, cl. 2.

3 Arnett v. Meredith, 275 Ky. 223, 121 S.W.2d 36, 119 A.L.R. 1183 (1938).

4 Alaska Legislative Council v. Knowles, 21 P.3d 367 (Alaska 2001).

5 U.S. Const. Art. I, § 7, cl. 2.

6 Drummond v. Beasley, 331 S.C. 559, 503 S.E.2d 455 (1998).

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a. In General

§ 33. Time limitations on executive action; effect of failure to act within required time

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 29

In some jurisdictions, the governor has a specified number of days from the date of presentation of a bill to veto it and prevent it from becoming law, and to veto the bill, the governor must return it to the legislature within the prescribed number of days[1] if the legislature is in session.[2]

Under the Federal Constitution, if a bill is not returned by the president with 10 days, excepting Sundays,[3] after it has been presented to him or her, the bill will become a law in the same manner as if he or she had signed it[4] unless Congress, by its adjournment, prevents the bill's return.[5] A purpose of this type of constitutional provision is to give the chief executive suitable opportunity to consider bills presented to the chief executive, and the provision should be so construed as not to frustrate this purpose.[6]

CUMULATIVE SUPPLEMENT

Cases:

Purpose of the 90 day suspension in section of constitution providing that acts become effective 90 days after recess of the session of the legislature in which it was passed is to allow time in which legislative acts or resolves may be subjected to the people's veto. Me. Const. art. 4, pt. 3, §§ 16, 17(1). Payne v. Secretary of State, 2020 ME 110, 237 A.3d 870 (Me. 2020).

[END OF SUPPLEMENT]

Footnotes

1 D & M Healthcare, Inc. v. Kernan, 800 N.E.2d 898 (Ind. 2003); State ex rel. Ohio Gen. Assembly v. Brunner, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912 (2007), amended on reconsideration on other grounds, 115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232 (2007); In re Request of Governor Janklow, 2000 SD 106, 615 N.W.2d 618 (S.D. 2000).

2 In re Request of Governor Janklow, 2000 SD 106, 615 N.W.2d 618 (S.D. 2000).
As to the effect of the legislature's adjournment, see § 35.

3 § 34.

4 U.S. Const. Art. I, § 7, cl. 2.

5 § 35.

6 Wright v. U.S., 302 U.S. 583, 58 S. Ct. 395, 82 L. Ed. 439 (1938).

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§ 34. Time limitations on executive action; effect of failure to act within required time—Computation of time

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 29

In computing the period of time within which a chief executive may approve an act of the legislature presented to the chief executive or within which the act, if not returned, will become a law, the terms used in the applicable constitutional provision are to be given the meaning they have in common use unless there are strong reasons to the contrary. In computing the time allowed for the approval or disapproval of a bill by the chief executive, the period is regarded as beginning when the bill is presented to the chief executive.[1] Pursuant to a state constitution, when the General Assembly is in session, the 10-day period during which a governor may sign a bill or return it to the General Assembly with his or her veto message, and after which it becomes law without his or her signature, begins after the bill is presented to him or her.[2] The day of a bill's presentment is generally excluded from the computation of the time within which the governor is constitutionally required to either sign a bill or fail to veto a bill, while the last day is included. Thus, the running of the period begins at 12:01 a.m. on the day following the day of presentment and concludes at midnight of the last day.[3] Sundays may[4]—as, for example, is the case of the computation of time for the return of a bill to Congress by the President[5]—or may not be excluded in the computation of time within which a bill must be approved or rejected, and holidays may be included.[6]

Footnotes

1 Okanogan, Methow, San Poelis (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of State of Washington v. U.S., 279 U.S. 655, 49 S. Ct. 463, 73 L. Ed. 894, 64 A.L.R. 1434 (1929).

2 State ex rel. Ohio Gen. Assembly v. Brunner, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912 (2007), amended on reconsideration on other grounds, 115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232 (2007).

3 In re Janklow, 1999 SD 27, 589 N.W.2d 624 (S.D. 1999).

4 Opinion of the Justices, 673 A.2d 1291 (Me. 1996).

5 U.S. Const. Art. I, § 7, cl. 2.

6 In re Janklow, 1999 SD 27, 589 N.W.2d 624 (S.D. 1999).

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4. Approval and Veto

a. In General

§ 35. Effect of adjournment, recess, or holiday

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 29, 30

As a rule, the approval by the executive of a bill passed by a legislature is not a legislative question in the sense that such approval may not be given after final adjournment of the legislature, and, in the absence of an express constitutional prohibition, the mere fact that, at the time the executive signs a bill, the legislature has adjourned will not necessarily prevent the bill from becoming a law.[1] In this regard, state constitutional provisions sometimes provide that to veto a bill, the governor must return it to the legislature within the prescribed number of days if the legislature is in session, but if the legislature recesses during the prescribed period and thereby prevents the governor from making a timely return of the vetoed bill, the governor may still make a timely return upon the reconvening of the legislature from that recess.[2] Pursuant to a state constitution, when the General Assembly adjourns sine die, preventing the return of a bill to the General Assembly, the bill becomes law unless, within 10 days after such adjournment, it is filed by the governor with the governor's objections in writing in the office of the secretary of state.[3] Under the Federal Constitution, if a bill is not returned by the President with a specified number of days after it has been presented to him or her, the bill will become a law in the same manner as if he or she had signed it[4] unless Congress, by its adjournment, prevents the bill's return, in which case, it will not become a law.[5]

The term "adjournment" as used in a constitutional provision providing that a bill will not become a law by the failure of the chief executive to return it within the designated period of time, where such return is prevented by an "adjournment" of the legislature, usually means an adjournment which is final in character. In some jurisdictions, the rule is that a governor is not required to deliver veto messages and bills during recesses, adjournments, at night, over weekends, during national holidays, or during a break before the final legislative day, and if a recess during a session operates to prevent the governor from making

a timely return of a vetoed bill, the constitutional provision related to the delivery of gubernatorial vetoes permits the governor to make a timely return of the bill upon the reconvening of the legislature from the recess.[6]

A constitutional provision governing the manner of vetoing a bill when "the General Assembly, by their adjournment, prevent its return" to the General Assembly within 10 days applies to ordinary adjournment and not only to adjournment sine die; the constitutional language would be interpreted in its popular sense and so as to ensure the continuation of the constitution's system of checks and balances.[7]

A recess of three days or less of the house of Congress in which a bill originates, during which the other house remains in session, is not an "adjournment" under the federal provision providing that if a bill is not returned by the President with a specified number of days after it has been presented to him, the bill will become a law in the same manner as if he had signed it[8] unless Congress, by its adjournment, prevents the bill's return, in which case, it will not become a law,[9] and thus, does not prevent the return of the bill by the President to the house wherein the bill originates.[10] The phrase "prevents its return," in a constitutional provision stating, if the General Assembly by adjournment prevents its return, a bill becomes law unless, within 10 days after such adjournment, the governor files the bill, with written objections, in the office of the secretary of state, distinguishes between a temporary recess of the General Assembly, during which the usual 10-days-from-presentment rule applies, from the General Assembly's adjournment sine die, a final adjournment of the legislative session that "prevents" the bill's return to the General Assembly, and triggers the 10-days-from-adjournment rule.[11]

Footnotes

1 Edwards v. U.S., 286 U.S. 482, 52 S. Ct. 627, 76 L. Ed. 1239 (1932); State ex rel. Schneider v. Shanahan, 220 Kan. 179, 220 Kan. 589, 552 P.2d 964 (1976).
As to the veto of appropriation bills after adjournment of the legislature, see Am. Jur. 2d, Public Funds § 33.

2 In re Request of Governor Janklow, 2000 SD 106, 615 N.W.2d 618 (S.D. 2000).

3 State ex rel. Ohio Gen. Assembly v. Brunner, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912 (2007), amended on reconsideration on other grounds, 115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232 (2007).

4 § 33.

5 U.S. Const. Art. I, § 7, cl. 2.

6 In re Request of Governor Janklow, 2000 SD 106, 615 N.W.2d 618 (S.D. 2000).

7 Jubelirer v. Pennsylvania Dept. of State, 859 A.2d 874 (Pa. Commw. Ct. 2004), order aff'd, 582 Pa. 364, 871 A.2d 789 (2005).

8 § 33.

9 U.S. Const. Art. I, § 7, cl. 2.

10 Wright v. U.S., 302 U.S. 583, 58 S. Ct. 395, 82 L. Ed. 439 (1938).

11 State ex rel. Ohio Gen. Assembly v. Brunner, 114 Ohio St. 3d 386, 2007-Ohio-3780, 872 N.E.2d 912 (2007), amended on reconsideration on other grounds, 115 Ohio St. 3d 103, 2007-Ohio-4460, 873 N.E.2d 1232 (2007).

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II. Enactment

B. Manner of Enactment

4. Approval and Veto

b. Preparation, Preservation, Publication, and Distribution of Statutes and Enrolled Bills

§ 36. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 14, 37 to 39

Federal statutes make specific provision as to the preparation, publication, and distribution of federal statutes[1] and as to the printing of enrolled bills.[2] Some state constitutions also provide that in order for the legislature to create a law, the proposed law must be enacted by bill and it also must be published.[3]

Under some state constitutional provisions where a section is amended, such section must be reenacted and published at length. The primary purpose of such a provision is to prevent the legislature from accidentally or intentionally misleading the public regarding the precise action taken in a given enactment.[4]

Observation:

A public officer may be obligated by law to print and publish the laws as enacted by the legislature, and generally, such an officer cannot make corrections or modifications which change the substantive meaning of a statute as enacted by the legislature.[5]

CUMULATIVE SUPPLEMENT

Cases:

Under the Georgia Constitution, the Georgia Code Revision Commission's role in compiling the statutory text and accompanying annotations falls within the sphere of legislative authority. Ga. Code Ann. § 28-9-2(c). Georgia v. Public.Resource.Org, Inc., 140 S. Ct. 1498 (2020).

[END OF SUPPLEMENT]

Footnotes

1 1 U.S.C.A. §§ 201, 202, 205 to 212.
1 U.S.C.A. § 203 makes specific provision as to the printing of bills to codify, revise, and reenact the general and permanent laws relating to the District of Columbia and cumulative supplements thereto.
1 U.S.C.A. § 213 authorizes an annual appropriation for preparation and editing to carry out the purposes of 1 U.S.C.A. §§ 202, 203.

2 1 U.S.C.A. § 107.

3 Milwaukee Journal Sentinel v. Wisconsin Dept. of Admin., 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700 (2009).

4 Gilmore v. Landsidle, 252 Va. 388, 478 S.E.2d 307 (1996).

5 State v. Urbano, 256 Neb. 194, 589 N.W.2d 144 (1999).

73 Am. Jur. 2d Statutes § 37

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b. Preparation, Preservation, Publication, and Distribution of Statutes and Enrolled Bills

§ 37. Archiving of federal enrolled bills

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 37

Under federal law, whenever a bill, having been approved by the President, or not having been returned by him or her with his or her objections, becomes a law or takes effect, it must forthwith be received by the Archivist of the United States from the President; and whenever a bill is returned by the President with his or her objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it must be received by the Archivist of the United States from the President of the Senate or Speaker of the House of Representatives in whichever House it was last approved, and he must carefully preserve the originals.[1]

Footnotes

1 1 U.S.C.A. § 106a.
As to federal "enrolled bills," generally, see § 23.

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III. Impeachment of Statutes Enacted; Evidence Affecting Content or Validity of Statutes; Legislative Journals

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Statutes 57.1 to 62, 282.1 to 286

A.L.R. Library

A.L.R. Index, Statutes
West's A.L.R. Digest, Statutes 57.1 to 62, 282.1 to 286

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§ 38. Evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 57.1 to 62, 282.1 to 284

For the purpose of securing certainty, as a general rule, the regular enactment of an officially promulgated statute may not be impeached by parol evidence or oral testimony either of individual officers and members or of strangers who may be interested in nullifying legislative action.[1] In jurisdictions in which the journal entries are not competent evidence to attack the validity of an enrolled act,[2] it would seem to follow that the validity of such act may not be attacked by other sources of testimony.[3]

In considering the validity of a statute, courts will not inquire into whether the legislature complied with its own rules in enacting the statute as long as no constitutional provision is violated.[4] Courts are not concerned with the motives which actuate members of a legislative body in enacting a law but in the results of their action in determining the validity of a law.[5]

Footnotes

1 Pulskamp v. Martinez, 2 Cal. App. 4th 854, 3 Cal. Rptr. 2d 607 (2d Dist. 1992).
As to parol evidence in contradiction of the records of local legislative bodies, see Am. Jur. 2d, Evidence § 1116.

2 § 41.

3 Williams v. MacFeeley, 186 Ga. 145, 197 S.E. 225 (1938).

4 State ex rel. Grendell v. Davidson, 86 Ohio St. 3d 629, 1999-Ohio-130, 716 N.E.2d 704 (1999).

5 W.S. Carnes, Inc. v. Board of Sup'rs of Chesterfield County, 252 Va. 377, 478 S.E.2d 295 (1996).

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73 Am. Jur. 2d Statutes § 39

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§ 39. Printed laws; conflict with enrolled acts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 57.1 to 60, 282.1

Annual printed laws, the correctness of which has been duly certified by the applicable state secretary of state, are prima facie evidence of the correctness and authenticity of the laws therein printed.[1] A publisher's correction becomes part of a statute if the publisher did not change the substantive meaning of the statute as it was originally intended by the legislature.[2] However, where there is a variance or repugnancy in terms between the printed copy of a statute and the original enrolled act signed by the presiding officers of the legislature, approved by the governor, and deposited with the proper officer, the original enrolled act controls.[3] As prima facie evidence, the printed statutes will establish a fact or sustain a judgment unless contradictory evidence is produced. Although the printed statutes are prima facie evidence of the laws of the state, they are not the laws themselves; the actual laws of the state as passed by the legislature are contained in the session laws.[4] In this regard, the Uniform Statute and Rule Construction Act provides that if the text of an enrolled bill differs from a later publication of the text, the enrolled bill prevails.[5]

Footnotes

1 State v. Groves, 80 Ohio St. 351, 88 N.E. 1096 (1909).

2 Independent Finance Institute v. Clark, 1999 OK 43, 990 P.2d 845 (Okla. 1999), as amended on denial of reh'g, (Nov. 4, 1999).

3 Charleston Nat. Bank v. Fox, 119 W. Va. 438, 194 S.E. 4 (1937).

4 Granville v. Minneapolis Public Schools, Special School Dist. No. 1, 732 N.W.2d 201, 220 Ed. Law Rep. 850 (Minn. 2007).

5 Unif. Statute and Rule Construction Act § 11.

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73 Am. Jur. 2d Statutes § 40

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III. Impeachment of Statutes Enacted; Evidence Affecting Content or Validity of Statutes; Legislative Journals

§ 40. Printed laws; conflict with enrolled acts—Federal law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 57.1 to 62, 282.1 to 284, 286

It is provided by federal statute that the United States Statutes at Large are legal evidence of laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained in all the courts of the United States, the several states, and the territories and insular possessions of the United States.[1] It is also provided by federal statute that in all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each state, territory, or insular possession of the United States, the matter set forth in the edition of the Code of Laws of the United States current at any time will, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session that the legislation of which is included. Whenever titles of such Code have been enacted into positive law, the text thereof will be legal evidence of the laws therein contained in all the courts of the United States, the several states, and the territories and insular possessions of the United States.[2] Furthermore, the edition of the laws and treaties of the United States, published by Little and Brown, and the publications in slip or pamphlet form of the laws of the United States issued under the authority of the Archivist of the United States are competent evidence of the several public and private acts of Congress in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.[3]

Although the inclusion of a provision in the United States Code establishes the provision prima facie as a law of the United States,[4] the Code does not prevail over the Statutes at Large when the two are inconsistent.[5]

Footnotes

1 1 U.S.C.A. § 112, as discussed in Am. Jur. 2d, Evidence § 1338.

2 1 U.S.C.A. § 204(a).
1 U.S.C.A. § 204(b) sets forth provisions similar to those of 1 U.S.C.A. § 204(a), with regard to evidentiary effects of the publication of District of Columbia statutory law.

3 1 U.S.C.A. § 113, as discussed in Am. Jur. 2d, Evidence § 1338.

4 Brown v. U.S., 35 Fed. Cl. 258 (1996), aff'd, 105 F.3d 621 (Fed. Cir. 1997).

5 Wong Yang Sung v. McGrath, 339 U.S. 33, 70 S. Ct. 445, 94 L. Ed. 616 (1950), judgment modified on other grounds, 339 U.S. 908, 70 S. Ct. 564, 94 L. Ed. 1336 (1950).

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§ 41. Legislative journals

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 60, 283(2), 285

Apart from the issue of an alleged discrepancy in the contents of a bill,[1] the recitals in the journals of the legislature import absolute verity,[2] and are conclusive, unless there is an absence of any indication that the required procedures were followed in the face of clear evidence that such steps were not followed.[3] Under these rules, parol evidence may not be introduced in contradiction of journal entries.[4]

The view has sometimes been followed that resort may not be had to journal entries for the purpose of determining alleged discrepancies.[5] In some jurisdictions, however, the courts are permitted to have recourse to the journals of either house of the legislature for the purpose of ascertaining whether a law has in fact been passed in accordance with constitutional requirements.[6]

The legislature will be presumed to have done each act required by the constitution in the passage of a statute, where it does not affirmatively appear on the journal that it failed to do so.[7] In jurisdictions in which recourse may be had to the legislative journals to determine whether there has been compliance with the constitutional requirements as to the enactment of laws, the general rule is that if it appears from the journals that the constitutional provisions have not been observed or that the act as enrolled is not the law that was passed by the legislature, the bill may not be recognized as a law and will be declared invalid.[8] However, a mere clerical error in keeping the journals of one of the houses of the legislature does not render void a law which appears on its statute book and in the archives of the state.[9] In this respect, legislative journals may not be impeached on the ground of mistake or fraud.[10]

Practice Tip:

A court may take judicial notice of the contents of legislative journals showing that a particular provision of a statute was added by amendment or to determine whether a statute was regularly enacted according to the forms prescribed by the state constitution. A court, though, will not take judicial notice of legislative journals to the extent of searching them at the request of counsel to ascertain whether a statute was in fact enacted.[11]

Footnotes

1 Milwaukee County v. Isenring, 109 Wis. 9, 85 N.W. 131 (1901).

2 Randles v. Washington State Liquor Control Bd., 33 Wash. 2d 688, 206 P.2d 1209, 9 A.L.R.2d 531 (1949).

3 Bezio v. Neville, 113 N.H. 278, 305 A.2d 665 (1973).
As to the receipt in evidence of legislative journals without further proof of their authenticity, see Am. Jur. 2d, Evidence § 1321.
As to imputed notice of facts appearing on journals of the legislature, see Am. Jur. 2d, Notice § 25.

4 § 38.

5 Atchison, T. & S. F. Ry. Co. v. State, 1911 OK 61, 28 Okla. 94, 113 P. 921 (1911).

6 Baines v. New Hampshire Senate President, 152 N.H. 124, 876 A.2d 768 (2005).

7 Integration of Bar Case, 244 Wis. 8, 11 N.W.2d 604, 151 A.L.R. 586 (1943).

8 Amos v. Moseley, 74 Fla. 555, 77 So. 619 (1917).

9 George Bolln Co. v. North Platte Valley Irr. Co., 19 Wyo. 542, 121 P. 22 (1912).

10 Heiskell v. Knox County, 132 Tenn. 180, 177 S.W. 483 (1915).

11 Am. Jur. 2d, Evidence § 134.

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III. Impeachment of Statutes Enacted; Evidence Affecting Content or Validity of Statutes; Legislative Journals

§ 42. Enrolled bills

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 60, 283(2)

In order to preserve the separation of powers, the judiciary exercises restraint in invalidating enacted legislation. One aspect of such restraint has been the principle, embodied in the enrolled bill doctrine, that, once a statute is attested by the presiding officers of the legislature, approved by the governor, and officially lodged, it is presumed to have been enacted in the manner required by law. An "enrolled bill," presumed to have been enacted in the manner required by law, is one which has been certified by the Speaker of the House and the presiding officer of the Senate as having passed the General Assembly and has been signed by the governor and lodged with the Secretary of the Commonwealth. The doctrine provides that the subjective, individualized motivations or impressions of specific legislators would not be an appropriate basis upon which to rest a determination as to its validity. Yet, the doctrine does not prevent the judiciary from exercising its function as the arbiter of whether a law passes constitutional muster.[1] In these states, the enrolled bill doctrine is inapplicable to preclude judicial review where constitutional procedures are implicated.[2] A "modified enrolled bill rule" holds an enrolled bill as conclusive evidence of proper enactment except as to constitutionally mandated journal entries which are specifically questioned.[3]

Some states do not subscribe to the enrolled bill doctrine under which an enrolled bill is conclusive proof of proper legislative action.[4]

In other states, the enrolled bill rule forbids an inquiry into the legislative procedures preceding the enactment of a statute that is properly signed and fair upon its face. The court will not go behind an enrolled enactment to determine the method, the procedure, the means, or the manner by which it was passed in the houses of the legislature.[5] In these states, an act ratified by the presiding officers of the legislature, approved by the governor, and enrolled in the proper state office is conclusively presumed to have been properly passed, and such an act is not subject to impeachment by evidence outside the act as enrolled to show it was not passed in compliance with law.[6] Once the Speaker of the House of Representatives and the President of the Senate certify that the procedural requirements for passing a bill have been met, a bill is conclusively presumed to have met all procedural requirements for passage.[7] Courts in these states have declined to examine the history of a bill even where the

petitioner claimed that constitutionally mandated procedures were not followed.[8] This doctrine is grounded in respect for the legislature's role as a coequal branch of government.[9]

Footnotes

1 Poulson v. Pennsylvania Bd. of Probation and Parole, 20 A.3d 1178 (Pa. 2011), cert. denied, 132 S. Ct. 285, 181 L. Ed. 2d 171 (2011).

2 Grimaud v. Com., 581 Pa. 398, 865 A.2d 835 (2005).

3 In re Rounds, 2003 SD 30, 659 N.W.2d 374 (S.D. 2003).

4 Baines v. New Hampshire Senate President, 152 N.H. 124, 876 A.2d 768 (2005).

5 Brown v. Owen, 165 Wash. 2d 706, 206 P.3d 310 (2009).

6 Medical Soc. of South Carolina v. Medical University of South Carolina, 334 S.C. 270, 513 S.E.2d 352, 133 Ed. Law Rep. 1071 (1999).

7 Friends of Parks v. Chicago Park Dist., 203 Ill. 2d 312, 271 Ill. Dec. 903, 786 N.E.2d 161 (2003).

8 Brown v. Owen, 165 Wash. 2d 706, 206 P.3d 310 (2009).
The enrolled bill rule precluded judicial inquiry into whether an appropriations bill satisfied the constitutional requirement that a bill pass both houses of Congress in order to become law where the bill was signed by the presiding members of both houses of Congress; application of the enrolled bill rule was not limited to journal-based challenges. Public Citizen v. U.S. Dist. Court for Dist. of Columbia, 486 F.3d 1342 (D.C. Cir. 2007).

9 Medical Soc. of South Carolina v. Medical University of South Carolina, 334 S.C. 270, 513 S.E.2d 352, 133 Ed. Law Rep. 1071 (1999); Brown v. Owen, 165 Wash. 2d 706, 206 P.3d 310 (2009).

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IV. Parts of Statute; Numbering

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 11, 40, 210

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IV. Parts of Statute; Numbering

A. In General

§ 43. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 11, 40

A statute is regarded as passed as a whole and not in parts.[1]

The distribution of the provisions of a statute into articles, titles, chapters, and sections is merely a matter of convenience in reference search and examination.[2] The classification of a law or a part of a law in a particular title or chapter of a statutory compilation is not determinative on the issue of legislative intent, though it may be persuasive in certain circumstances, and where there is a question, established principles of statutory construction must be utilized.[3]

Each section of a federal statute must be numbered.[4]

Headings, captions, or catch lines supplied in a compilation of statutes do not constitute any part of the law.[5]

Footnotes

1 Drake v. Schoregge, 85 Mont. 94, 277 P. 627 (1929); Rice v. Denny Roll & Panel Co., 199 N.C. 154, 154 S.E. 69 (1930).

2 Drazich v. Hollowell, 207 Iowa 427, 223 N.W. 253 (1929).

3 State v. Bradford, 787 So. 2d 811 (Fla. 2001).

4 1 U.S.C.A. § 104.

5 State v. Conklin, 249 Neb. 727, 545 N.W.2d 101 (1996); Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc., 70 Ohio St. 3d 281, 1994-Ohio-295, 638 N.E.2d 991 (1994).

As to the use of statutory section or title headings in the interpretation of the applicable statutory provisions, generally, see §§ 99, 100.

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IV. Parts of Statute; Numbering

A. In General

§ 44. Preamble

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 11, 210

Term "preamble" is defined as an introductory statement in a constitution, statute, or other document[1] generally preceding the enacting clause[2] explaining the document's basis and objective.[3] A preamble is not part of a statute itself, has no substantive legal force,[4] and is often generally omitted.[5]

Preambles are not controlling of a statute or rule's terms but are simply a useful aid for interpreting them when there is ambiguity.[6]

CUMULATIVE SUPPLEMENT

Cases:

Statements of purpose cannot override a statute's operative language. Sturgeon v. Frost, 139 S. Ct. 1066 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Renkey v. County Bd. of Arlington County, 272 Va. 369, 634 S.E.2d 352 (2006).

2 Atkins v. Deere & Co., 177 Ill. 2d 222, 226 Ill. Dec. 239, 685 N.E.2d 342 (1997).
As to the enacting clause, generally, see § 45.

3 Citizens Utility Bd. v. Illinois Commerce Com'n, 166 Ill. 2d 111, 209 Ill. Dec. 641, 651 N.E.2d 1089 (1995); Renkey v. County Bd. of Arlington County, 272 Va. 369, 634 S.E.2d 352 (2006).

4 People v. McCarty, 223 Ill. 2d 109, 306 Ill. Dec. 570, 858 N.E.2d 15 (2006); Renkey v. County Bd. of Arlington County, 272 Va. 369, 634 S.E.2d 352 (2006).

5 Renkey v. County Bd. of Arlington County, 272 Va. 369, 634 S.E.2d 352 (2006).

6 Carter v. California Dept. of Veterans Affairs, 38 Cal. 4th 914, 44 Cal. Rptr. 3d 223, 135 P.3d 637 (2006); Atkins v. Deere & Co., 177 Ill. 2d 222, 226 Ill. Dec. 239, 685 N.E.2d 342 (1997); People v. Garson, 6 N.Y.3d 604, 815 N.Y.S.2d 887, 848 N.E.2d 1264 (2006).

As to the effect of a preamble in the interpretation of statutes, generally, see § 101.

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IV. Parts of Statute; Numbering

A. In General

§ 45. Enacting clause; words of enactment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 2, 11, 40

The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority.[1] An enactment clause is a part of an act's body stating the precise action taken by the legislature, thereby establishing the act's jurisdiction and authenticity, and securing uniformity of identification thus preventing inadvertence, possible mistake, and fraud.[2] The purpose of an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act.[3]

A federal statute specifically sets forth the required form of the enacting clause of all acts of Congress.[4] No enacting words may be used in any section of an act of Congress except in the first section of such an act.[5]

Footnotes

1 Joiner v. State, 223 Ga. 367, 155 S.E.2d 8 (1967).

2 Gilmore v. Landsidle, 252 Va. 388, 478 S.E.2d 307 (1996).

3 Preckel v. Byrne, 62 N.D. 356, 243 N.W. 823 (1932).

4 1 U.S.C.A. § 101.

5 1 U.S.C.A. § 103.

73 Am. Jur. 2d Statutes IV B Refs.

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IV. Parts of Statute; Numbering

B. Title and Subject Matter

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Research References

West's Key Number Digest

West's Key Number Digest, Statutes 92, 105(1), 105(2), 106(1), 107(1) to 109.9, 126

A.L.R. Library

A.L.R. Index, Statutes

West's A.L.R. Digest, Statutes 92, 105(1), 105(2), 106(1), 107(1) to 109.9, 126

Forms

Am. Jur. Pleading and Practice Forms, Constitutional Law §§ 39, 40

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B. Title and Subject Matter

1. Title, in General

§ 46. Generally

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West's Key Number Digest

West's Key Number Digest, Statutes 109

There is authority for the rule that the title of a statute is not a part of the statute itself.[1] A title may also be used for purposes of identification.[2] Specific provision is made by federal statute as to requirements regarding the style and title of appropriation acts.[3]

CUMULATIVE SUPPLEMENT

Cases:

For purposes of analysis under constitutional subject-in-title rule, words in the title of legislation must be taken in their common and ordinary meanings, and the legislature cannot in the body of an act impose another or unusual meaning upon a term used in the title without disclosing such special meaning therein. West's RCWA Const. Art. 2, § 19. Washington Ass'n for Substance Abuse and Violence Prevention v. State, 278 P.3d 632 (Wash. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Jenkins v. Percival, 962 P.2d 796 (Utah 1998); Mireles v. Labor & Industry Review Com'n, 2000 WI 96, 237 Wis. 2d 69, 613 N.W.2d 875 (2000).

2 Kiernan v. City of Portland, 57 Or. 454, 111 P. 379 (1910).

3 1 U.S.C.A. § 105, as discussed in Am. Jur. 2d, Public Funds § 40.

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IV. Parts of Statute; Numbering

B. Title and Subject Matter

2. Sufficiency of Title

a. In General

§ 47. Constitutional provision requiring subject of statute to be stated in title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 106(1), 109.1 to 109.9

Forms

Am. Jur. Pleading and Practice Forms, Constitutional Law § 39 (Complaint, petition, or declaration—Allegation—Subject matter not included in title)

Some state constitutions require the title of an act to express the subject of the enactment.[1] A "clear title" provision of a state constitution, which requires that the subject of proposed legislation be clearly stated in its title, is designed to prevent fraudulent, misleading, and improper legislation by providing that the title should indicate in a general way the kind of legislation that was being enacted.[2] It keeps legislators and the public fairly apprised of the subject matter of pending laws[3] and protects against surprise or fraud upon the legislature and the public.[4] The constitutional clear title requirement is violated when the title of a bill is underinclusive or too broad and amorphous to be meaningful.[5]

The bill as enacted is the only version relevant to the requirement in a state constitution that the subject of proposed legislation be clearly stated in its title,[6] and a statute is not subject to impeachment by any alleged constitutional insufficiency of the title prior to act's ratification and enrollment.[7]

Footnotes

1 Sherman Concrete Pipe Co. v. Chinn, 283 Ga. 468, 660 S.E.2d 368 (2008); C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000).

2 Missouri State Medical Ass'n v. Missouri Dept. of Health, 39 S.W.3d 837 (Mo. 2001).

3 Jackson County Sports Complex Authority v. State, 226 S.W.3d 156 (Mo. 2007).

4 Godfrey v. State, 752 N.W.2d 413 (Iowa 2008); Beshear v. Haydon Bridge Co., Inc., 304 S.W.3d 682 (Ky. 2010), as corrected, (Mar. 17, 2010).

5 State v. Salter, 250 S.W.3d 705 (Mo. 2008).

6 Missouri State Medical Ass'n v. Missouri Dept. of Health, 39 S.W.3d 837 (Mo. 2001).

7 Medical Soc. of South Carolina v. Medical University of South Carolina, 334 S.C. 270, 513 S.E.2d 352, 133 Ed. Law Rep. 1071 (1999).

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2. Sufficiency of Title

a. In General

§ 48. Rules as to construction of constitutional provision

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 105(1), 106(1)

The subject in title requirement for statutes is to be liberally construed in favor of the constitutionality of the legislation.[1] It has been said that where the title of a bill is broad and comprehensive, great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced within the body of the bill, but if the legislature sees fit to employ a restricted title in which the language is of specific rather than generic import, the title will not be regarded so liberally and provisions of the bill not generally embraced therein cannot be given force.[2]

The rule that every legislative act is presumed to be constitutional, and that every intendment must be indulged by the courts in favor of its validity,[3] is applicable to statutes claimed to be unconstitutional as violating a constitutional provision requiring statutes to contain a statement of its subject or object in its title.[4]

The title of a statute is sufficient to satisfy constitutional requirements if the subject of a legislative enactment is so expressed in the title as to give reasonable notice of the contents of the law and if it afforded sufficient warning of the subject. Some expression in the title which calls attention to the subject of the bill, although in general terms, is all that is required for the title of a legislative enactment to satisfy constitutional requirements.[5] Title of legislation meets constitutional requirement for a clearly expressed title if it puts a reasonable person on notice of the general subject matter of the act.[6] The title of a statute complies with the subject in title rule if it provides notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law, considering the meaning that the title would convey to the typical reader, and whether the contents of the text of the legislation are reflected in the title.[7]

Any objections to the title must be grave, and the conflict between it and the constitution palpable before it will be held unconstitutional.[8] Where there is a doubt whether the subject or object of the act is sufficiently expressed in its title, such doubt should be resolved in favor of the validity of the act. Thus, where terms used in a statute are susceptible of more than one meaning, that meaning will be adopted which would render the statute in compliance with the constitutional provision under consideration rather than one which would cause the statute to be in violation thereof.[9]

Footnotes

1 Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

2 Olympic Motors Inc. v. McCroskey, 15 Wash. 2d 665, 132 P.2d 355, 150 A.L.R. 1306 (1942).

3 As to the construction of statutes in favor of their constitutionality, generally, see Am. Jur. 2d, Constitutional Law §§ 169 to 176.

4 Marshall v. Northern Virginia Transp. Authority, 275 Va. 419, 657 S.E.2d 71 (2008).

5 State v. Fugate, 332 Or. 195, 26 P.3d 802 (2001).

6 Stilp v. Com., 588 Pa. 539, 905 A.2d 918 (2006).

7 Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

8 Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

9 Eisman v. Martin, 174 Kan. 726, 258 P.2d 296 (1953).

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IV. Parts of Statute; Numbering

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2. Sufficiency of Title

a. In General

§ 49. Mandatory nature of constitutional requirement; effect of insufficiency of title

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 105(2), 126

A constitutional provision providing that the subject or object of a statute must be expressed in its title is generally considered to be mandatory[1] so that a failure to comply with the provision renders the relevant bill unconstitutional[2] and invalidates the statute,[3] or so much of the subject of the statute as is not expressed in the title, or is not germane to the subject expressed in the title.[4] However, in some jurisdictions, the applicable state constitution provides that a law may not be held void on the basis of an insufficient title.[5]

Congress' failure to enact a title as positive law has only evidentiary significance and does not render the underlying enactment invalid or unenforceable.[6]

Footnotes

1 Boyer v. Black, 154 Fla. 723, 18 So. 2d 886, 153 A.L.R. 869 (1944).

2 Home Builders Ass'n of Greater St. Louis v. State, 75 S.W.3d 267 (Mo. 2002); Pierce County v. State, 144 Wash. App. 783, 185 P.3d 594 (Div. 2 2008), as amended on denial of reconsideration, (July 15, 2008).

3 Heck v. Schupp, 394 Ill. 296, 68 N.E.2d 464, 167 A.L.R. 232 (1946).

4 § 50.

5 Preston v. State, 724 S.W.2d 53 (Tex. Crim. App. 1987).

6 Ryan v. Bilby, 764 F.2d 1325 (9th Cir. 1985).

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2. Sufficiency of Title

b. Effect of Generality or Particularity of Title

§ 50. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 109.2, 109.4

The touchstone of the constitutional "clear title rule" is that the bill's title cannot be underinclusive.[1] To comply with the clear title requirement of state constitution, the title need only indicate in a general way the kind of legislation that was being enacted. If bills have multiple and diverse topics within a single, overarching subject, title complies with clear title requirement of state constitution if that subject is clearly expressed by stating some broad umbrella category that includes all the topics within its cover.[2] The constitutional mandate for titles is satisfied if the provisions themselves are cognate and germane to the subject matter designated by the title, and if the title intelligently refers the reader to the subject to which the act applies, and suggests the field of legislation which the text includes.[3] Any subject reasonably germane to a general title may be embraced within the body of the bill.[4] The title of an act may be general so long as it is not made a cover to legislation incongruous in itself. The short title of the legislation cannot be so broad as to purportedly cover unrelated topics and thus provide no real guidance as to what the body of the act contains.[5]

Footnotes

1 C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000).

2 Jackson County Sports Complex Authority v. State, 226 S.W.3d 156 (Mo. 2007).

3 Marathon Entertainment, Inc. v. Blasi, 42 Cal. 4th 974, 70 Cal. Rptr. 3d 727, 174 P.3d 741 (2008), as modified, (Mar. 12, 2008).

4 Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

5 Franklin v. State, 887 So. 2d 1063 (Fla. 2004).

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b. Effect of Generality or Particularity of Title

§ 51. Partial and total invalidity of statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 109.2, 109.6, 126

There is authority for the view that so much of the subject of a statute as is not expressed in the title, or is not germane to the subject expressed in the title, is invalid.[1] However, there are circumstances under which an act that the title of which is less comprehensive than its body may be treated as void in its entirety.[2] This is true where the subjects or objects not covered by the title are so intimately connected with the one indicated by the title that the portion of the act relating to them cannot be rejected and leave a complete and sensible enactment capable of being executed[3] or where, in general, it is impossible to choose between the parts of the statute.[4] If an act contains more than one subject, and only one subject is expressed in the title, the whole act is a nullity.[5]

Footnotes

1 Gayle v. Edwards, 261 Ala. 84, 72 So. 2d 848 (1954).

2 State v. Candelaria, 28 N.M. 573, 215 P. 816 (1923).

3 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914).

4 Pioneer Irr. Dist. v. Bradbury, 8 Idaho 310, 68 P. 295 (1902).

5 State ex rel. Astor v. Schlitz Brewing Co., 104 Tenn. 715, 59 S.W. 1033 (1900).
As to the invalidity of statutes containing more than one subject, generally, see § 53.

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B. Title and Subject Matter

2. Sufficiency of Title

b. Effect of Generality or Particularity of Title

§ 52. Effect of omission of distinct provisions, details, or means and instrumentalities for accomplishing purpose of act

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 109.2, 109.3, 109.6, 126

The title of a statute need not embody each distinct provision of the act.[1] Where the title expresses the general subject or object of the act, all minor subdivisions thereof germane to the general subject or object will be considered to be included in it.[2]

The title of proposed legislation may omit particular details of the bill without violating the "clear title" provision of the state constitution so long as neither the legislature nor the public is misled.[3] Accordingly, a title need not be an index to the contents or delineate in detail the substance of the statute[4] so long as those provisions are consistent with the broad purpose expressed in the title.[5] However, that a somewhat detailed listing in a title is not complete is of no consequence if the disputed sections relate to the general subject and the subject is expressed in the title.[6]

It is not essential that the title of an act should recite the provisos and exceptions appearing in its body, and the fact that they appear in the act without previous mention in no way affects the sufficiency of the title as long as they are germane to the subject or object expressed in the title,[7]

nor is it required that the title of an act contain a synopsis of all the means by which the objective of the law is to be accomplished; a title is sufficient if it fairly gives adequate notice as will reasonably lead to further inquiry into the body of the act.[8]

Footnotes

1 Town of Brilliant v. City of Winfield, 752 So. 2d 1192 (Ala. 1999).

2 Snyder v. Ingram, 48 Wash. 2d 637, 296 P.2d 305, 60 A.L.R.2d 482 (1956).

3 Franklin v. State, 887 So. 2d 1063 (Fla. 2004); Missouri State Medical Ass'n v. Missouri Dept. of Health, 39 S.W.3d 837 (Mo. 2001).

4 Marathon Entertainment, Inc. v. Blasi, 42 Cal. 4th 974, 70 Cal. Rptr. 3d 727, 174 P.3d 741 (2008), as modified, (Mar. 12, 2008); Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

5 People v. Rodriguez, 61 Mich. App. 42, 232 N.W.2d 293 (1975).

6 City of Pensacola v. Shevin, 396 So. 2d 179 (Fla. 1981).

7 Bay Shore v. Steckloff, 107 So. 2d 171 (Fla. Dist. Ct. App. 3d Dist. 1958).

8 Washington State Grange v. Locke, 153 Wash. 2d 475, 105 P.3d 9 (2005).

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B. Title and Subject Matter

3. One-Subject Requirement

§ 53. Applicable constitutional provisions and requirements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 107(1) to 107(11)

Forms

Am. Jur. Pleading and Practice Forms, Constitutional Law § 40 (Complaint, petition, or declaration—Allegation—More than one subject in act)

In many states, constitutional provisions have been adopted to the effect that no act may contain more than one subject.[1] Furthermore, each section of a federal statute must contain, as nearly as possible, a single proposition of enactment.[2]

Caution:

State constitutional provisions under which every legislative act must embrace but one subject, and matters properly connected therewith, with the subject expressed in the act's title, state separate requirements for the body of an act, and the title of an act, and also connects the two requirements by establishing a relationship between the body and the title.[3]

The purpose of the single subject provision in a state constitution is to encourage an open, deliberative, and accountable government by limiting the practice of inserting a number of distinct and independent subjects into a single bill.[4] It is intended to ensure that legislation is not passed without adequate consideration by the legislature and to prevent passage of a bill containing unrelated subjects[5] and prevents a single enactment from becoming a "cloak" for dissimilar legislation having no necessary or appropriate connection with the subject matter.[6] The single subject requirement seeks to prevent grouping of incompatible measures, as well as pushing through unpopular legislation by attaching it to popular or necessary legislation.[7] It prevents "logrolling," combining several proposals in a single bill so that legislators, by combining their votes, obtain a majority for a measure which would not have been approved if divided into separate bills.[8] The single subject rule exists in part to prevent the legislature from "veto-proofing" a bill or attaching a rider to a bill to prevent the governor from having any real opportunity to veto the measure.[9]

The mere fact that a bill embraces more than one topic is not fatal, for purposes of the state constitution's one-subject requirement for legislation, as long as a common purpose or relationship exists between the topics.[10] Neither the act's length nor the number of provisions in the act is determinative of its compliance with the single subject rule;[11] what is dispositive is whether the provisions in the act have a natural and logical connection to a single subject.[12] A piece of legislation violates the single subject rule when it contains unrelated provisions that by no fair interpretation have any legitimate relation to a single subject.[13] An act may include all matters germane to the general subject,[14] including the means reasonably necessary or appropriate to accomplishment of the legislative purpose[15] without violating the single subject requirement.

The legislature may combine in a single act numerous provisions governing projects so related and interdependent as to constitute a single scheme, and provisions auxiliary to the scheme's execution may be adopted as part of that single package.[16] To constitute a plurality of subject matter, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any logical connection with or relation to each other.[17]

Whether a bill violates the single subject requirement of the state constitution is a determination made as to the bill as finally passed.[18]

On a challenge under the one-subject rule to two specific statutes within a particular enactment, a court will limit its review to those statutes and would decline to examine the enactment as a whole.[19] The single subject rule is not violated even if a general subject contains several incidental subjects or subdivisions.[20]

CUMULATIVE SUPPLEMENT

Cases:

In determining whether constitutional single subject requirement for bills is met, court will examine whether the individual provisions relate to the subject expressed in the title, not whether the individual provisions relate to each other. Mo. Const. art. 3, § 23. Calzone v. Interim Commissioner of Department of Elementary and Secondary Education, 584 S.W.3d 310 (Mo. 2019).

The purposes of the single-subject rule under state constitution are to ensure that legislators or voters of Oklahoma are adequately notified of the potential effect of the legislation and to prevent "logrolling," i.e., the practice of ensuring the passage of a law by creating one choice in which a legislator or voter is forced to assent to an unfavorable provision to secure passage of a favorable one, or conversely, forced to vote against a favorable provision to ensure an unfavorable provision is not enacted. Const. Art. 5, § 57. Douglas v. Cox Retirement Properties, Inc., 2013 OK 37, 302 P.3d 789 (Okla. 2013).

In determining whether a proposed unifying subject is sufficiently narrow so as to pass muster under single subject rule, Supreme Court must examine the various subjects contained within a legislative enactment and determine whether they have a nexus to a common purpose. Const. Art. 3, § 3. Com. v. Neiman, 84 A.3d 603 (Pa. 2013).

The constitutional "single-subject rule" aims to prevent the grouping of incompatible measures and to prevent "logrolling," which occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an unrelated law. West's RCWA Const. Art. 2, § 19. Washington Ass'n for Substance Abuse and Violence Prevention v. State, 278 P.3d 632 (Wash. 2012).

[END OF SUPPLEMENT]

Footnotes

1 Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011); Townsend v. State, 767 N.W.2d 11 (Minn. 2009); Rentschler v. Nixon, 311 S.W.3d 783 (Mo. 2010), as modified on denial of reh'g, (May 11, 2010).

2 1 U.S.C.A. § 104.

3 C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322 (Mo. 2000); State v. Fugate, 332 Or. 195, 26 P.3d 802 (2001).

4 Spahn v. Zoning Bd. of Adjustment, 602 Pa. 83, 977 A.2d 1132 (2009).

5 People v. Olender, 222 Ill. 2d 123, 305 Ill. Dec. 1, 854 N.E.2d 593 (2005).

6 Tormey v. Moore, 824 So. 2d 137 (Fla. 2002).

7 Pierce County v. State, 144 Wash. App. 783, 185 P.3d 594 (Div. 2 2008), as amended on denial of reconsideration, (July 15, 2008).

8 Townsend v. State, 767 N.W.2d 11 (Minn. 2009); Rumpke Sanitary Landfill, Inc. v. State, 128 Ohio St. 3d 41, 2010-Ohio-6037, 941 N.E.2d 1161 (2010); Nova Health Systems v. Edmondson, 2010 OK 21, 233 P.3d 380 (Okla. 2010).

9 Nova Health Systems v. Edmondson, 2010 OK 21, 233 P.3d 380 (Okla. 2010).

10 State ex rel. Willke v. Taft, 107 Ohio St. 3d 1, 2005-Ohio-5303, 836 N.E.2d 536 (2005).

11 Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011).

12 Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011); Townsend v. State, 767 N.W.2d 11 (Minn. 2009); Rentschler v. Nixon, 311 S.W.3d 783 (Mo. 2010), as modified on denial of reh'g, (May 11, 2010).

13 Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011).

14 Tormey v. Moore, 824 So. 2d 137 (Fla. 2002); Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011); Townsend v. State, 767 N.W.2d 11 (Minn. 2009).

15 Tormey v. Moore, 824 So. 2d 137 (Fla. 2002); Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011); Rentschler v. Nixon, 311 S.W.3d 783 (Mo. 2010), as modified on denial of reh'g, (May 11, 2010).

16 Marathon Entertainment, Inc. v. Blasi, 42 Cal. 4th 974, 70 Cal. Rptr. 3d 727, 174 P.3d 741 (2008), as modified, (Mar. 12, 2008).

17 Perdue v. O'Kelley, 280 Ga. 732, 632 S.E.2d 110 (2006).

18 Trout v. State, 231 S.W.3d 140 (Mo. 2007).

19 Groch v. Gen. Motors Corp., 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377 (2008).

20 Citizens for Responsible Wildlife Management v. State, 149 Wash. 2d 622, 71 P.3d 644 (2003).

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B. Title and Subject Matter

3. One-Subject Requirement

§ 54. Definitions and distinctions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 107(1)

Within the meaning of a constitutional provision that no act may contain more than one subject, the "subject" of an act is regarded as the matter or thing forming the groundwork of the act[1] or the chief thing or matter to which it relates and with which it deals.[2] A "subject" can include all matters that fall within or reasonably relate to the general core purpose of the proposed legislation; this subject is discerned, whenever possible, from the title of the bill.[3] Policy expressions in a bill or voter initiative measure do not contribute additional "subjects" within the meaning of a single subject legislation provision in a state constitution.[4] There is a difference between the subject of the act that is briefly stated in the title and the object of the act; the subject is the matter to which an act relates, but the object is the purpose to be accomplished.[5] However, there is authority for the view that that the "subject" and "object" of a law are equivalent terms.[6] Some state constitutions provide that no law may embrace more than one object.[7]

Observation:

While the term "subject," as set forth in single subject rule of a state constitution, is liberally construed in favor of upholding a legislative enactment,[8] this principle does not give the legislature such latitude as to include in one act blatantly unrelated matters.[9]

CUMULATIVE SUPPLEMENT

Cases:

Under constitutional one-object analysis, the object and subject of a bill are not the same thing; the "object" of a law is the aim or purpose of the enactment, while the "subject" of a law is the matter to which it relates and with which it deals. LSA–Const. Art. 3, § 15. Louisiana Federation of Teachers v. State, 171 So. 3d 835 (La. 2014).

In considering whether a bill comports with the one-object requirement of State Constitution, court must first identify the main purpose or object of the bill, and then to examine each provision thereof to determine whether its parts have a natural connection and reasonably relate, directly or indirectly, to that purpose. LSA–Const. Art. 3, § 15(A). Louisiana Federation of Teachers v. State, 118 So. 3d 1033 (La. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Capitol Distributing Co. v. Redwine, 206 Ga. 477, 57 S.E.2d 578 (1950).

2 Nichols v. Yandre, 151 Fla. 87, 9 So. 2d 157, 144 A.L.R. 1351 (1942).

3 Rizzo v. State, 189 S.W.3d 576 (Mo. 2006).

4 Pierce County v. State, 150 Wash. 2d 422, 78 P.3d 640 (2003), as amended on denial of reconsideration, (Mar. 9, 2004).

5 Franklin v. State, 887 So. 2d 1063 (Fla. 2004).

6 State v. Collier, 160 Tenn. 403, 23 S.W.2d 897 (1930).

7 Pohutski v. City of Allen Park, 465 Mich. 675, 641 N.W.2d 219 (2002).

8 Wirtz v. Quinn, 2011 IL 111903, 352 Ill. Dec. 218, 953 N.E.2d 899 (Ill. 2011).
Subject matter, for purposes of state constitutional prohibition of multiple subject matters in legislation, is to be given a broad and extended meaning so as to allow the legislature authority to include in one act all matters having a logical or natural connection. Perdue v. O'Kelley, 280 Ga. 732, 632 S.E.2d 110 (2006).

9 State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

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IV. Parts of Statute; Numbering

B. Title and Subject Matter

3. One-Subject Requirement

§ 55. General rules for interpretation of single subject requirement

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 107(1)

The single subject provision of a state constitution is not to be interpreted narrowly or technically[1] but is to be liberally construed so as to uphold the challenged legislation[2] if practicable[3] and not used to invalidate legitimate legislation.[4] Doubtful or close cases are to be resolved in favor of upholding the act's validity;[5] however, it should not be construed so liberally as to foster the abuses that its provisions are designed to prevent.[6] Courts give the legislature great latitude in enacting comprehensive legislation by not construing the one-subject rule so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject.[7]

Practice Tip:

The determination by a legislature that sections of a legislative enactment constitute one subject is neither conclusive nor binding upon a court in addressing whether the enactment satisfies the one-subject rule.[8]

Footnotes

1 Wilhelm v. Brewer, 219 Ariz. 45, 192 P.3d 404 (2008).

2 Wilhelm v. Brewer, 219 Ariz. 45, 192 P.3d 404 (2008); Marathon Entertainment, Inc. v. Blasi, 42 Cal. 4th 974, 70 Cal. Rptr. 3d 727, 174 P.3d 741 (2008), as modified, (Mar. 12, 2008); Sea Cove Development, LLC v. Harbourside Community Bank, 387 S.C. 95, 691 S.E.2d 158 (2010).

3 Sea Cove Development, LLC v. Harbourside Community Bank, 387 S.C. 95, 691 S.E.2d 158 (2010).

4 Marathon Entertainment, Inc. v. Blasi, 42 Cal. 4th 974, 70 Cal. Rptr. 3d 727, 174 P.3d 741 (2008), as modified, (Mar. 12, 2008).

5 Sea Cove Development, LLC v. Harbourside Community Bank, 387 S.C. 95, 691 S.E.2d 158 (2010).

6 State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd., 104 Ohio St. 3d 122, 2004-Ohio-6363, 818 N.E.2d 688 (2004); Sea Cove Development, LLC v. Harbourside Community Bank, 387 S.C. 95, 691 S.E.2d 158 (2010).

7 State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

8 State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

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73 Am. Jur. 2d Statutes § 56

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Statutes

Barbara J. Van Arsdale, J.D., Tracy Bateman Farrell, J.D., and Tom Muskus, J.D.

IV. Parts of Statute; Numbering

B. Title and Subject Matter

3. One-Subject Requirement

§ 56. Rules favoring constitutionality of statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 107(1)

The rule that every legislative act is presumed to be constitutional and every intendment must be indulged by the courts in favor of its validity[1] is applicable to statutes claimed to be unconstitutional as in violation of the provision prohibiting statutes from containing more than one subject or object.[2] If any doubt exists that an act violates single subject clause of the state constitution or of any constitutional provision, the presumption is in favor of constitutionality; to overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed that the legislature intended to enact a valid law.[3] Indeed, the objection should be grave, and the conflict between the statute and the constitution substantial and plain or palpable, before the judiciary should disregard a legislative enactment upon the ground that it embraces more than one subject or object.[4]

Footnotes

1 As to the construction of statutes in favor of their constitutionality, generally, see Am. Jur. 2d, Constitutional Law §§ 169 to 176.

2 State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

3 Franklin v. State, 887 So. 2d 1063 (Fla. 2004).

4 Bond v. Phelps, 1948 OK 76, 200 Okla. 70, 191 P.2d 938 (1948).

73 Am. Jur. 2d Statutes § 57

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IV. Parts of Statute; Numbering

B. Title and Subject Matter

3. One-Subject Requirement

§ 57. Mandatory or directory nature of rule; effect of violation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Statutes 105(2), 107(1)

The one-subject provision is generally held to be mandatory[1] so that a failure to comply therewith renders a statute void.[2] A manifestly gross and fraudulent violation of the one-subject provision of the constitution will cause an enactment to be invalidated. Since the one-subject provision is capable of invalidating an enactment, it cannot be considered merely directory in nature.[3] A constitutional challenge to an enactment of the General Assembly based on violation of the one-subject rule is a challenge to the authority of the General Assembly to enact the bill, not a challenge to the underlying statutory provisions of the bill.[4]

Whenever a bill contains more than one subject, and thus violates the one-subject rule, a court is permitted to ascertain which subject is primary and which subject is an unrelated add-on, and the former is then saved by severing the latter.[5] A statute which fails to comply with a constitutional provision of the sort under discussion becomes valid upon its incorporation in a proper code or revision duly adopted as such.[6]

CUMULATIVE SUPPLEMENT

Cases:

Only a manifestly gross and fraudulent violation of the one-subject rule will cause the court to invalidate a legislative enactment. Const. Art. 2, § 15(D). Linndale v. State, 2014-Ohio-4024, 19 N.E.3d 935 (Ohio Ct. App. 10th Dist. Franklin County 2014).

[END OF SUPPLEMENT]

Footnotes

1 National Mut. Cas. Co. v. Briscoe, 1940 OK 487, 188 Okla. 440, 109 P.2d 1088 (1940).

2 People v. Brown, 225 Ill. 2d 188, 310 Ill. Dec. 561, 866 N.E.2d 1163 (2007).

3 In re Nowak, 104 Ohio St. 3d 466, 2004-Ohio-6777, 820 N.E.2d 335 (2004).
Despite earlier cases in which we described the one-subject rule as "directory" in nature, recent decisions of this court make it clear that we no longer view the one-subject rule as toothless. The one-subject rule is part of our constitution and therefore must be enforced. State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd., 104 Ohio St. 3d 122, 2004-Ohio-6363, 818 N.E.2d 688 (2004).

4 Rumpke Sanitary Landfill, Inc. v. State, 128 Ohio St. 3d 41, 2010-Ohio-6037, 941 N.E.2d 1161 (2010).

5 State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 1999-Ohio-123, 715 N.E.2d 1062 (1999).

6 Tormey v. Moore, 824 So. 2d 137 (Fla. 2002).

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